



An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

LIBERTY I BIOFUELS POWER, LLC

(QFID #1207)

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RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

LIBERTY I BIOFUELS POWER, LLC

(QFID #1207)

This Renewable Power Purchase and Sale Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the “Agreement”) is made and effective as of the following date: March 8, 2005 (“Effective Date”).

This Agreement is entered into between:

- (a) **Southern California Edison Company** (“SCE”), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (b) **Liberty I Biofuels Power, LLC** (“Seller”), a California limited liability company, whose principal place of business is at 1601 Skyway Drive, Bakersfield, California 93308.

SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as “Parties.”

Seller is willing to construct, own, and 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.*, and to sell all electric energy produced by the Generating Facility together with all Environmental and Capacity Attributes to SCE; and SCE is willing to purchase all electric energy delivered by Seller to SCE generated by such facility together with all Environmental and Capacity Attributes pursuant to the terms and conditions set forth herein.

Capitalized terms in this Agreement have the meanings set forth in Article One.

SPECIAL CONDITIONS

A. Generating Facility.

- (i) Name: **Liberty I Biofuels Project.**
- (ii) Location of Site: El Centro, California as more specifically described in Exhibit A.

On or before the Final Configuration Date, Seller may select a different Site and provide a revised Exhibit A in accordance with Section 3.07.

- (iii) Eligible Renewable Resource Type: **Biomass.**
- (iv) Net Contract Capacity shall be equal to **5,000 kW** (the “Initial Phase”), subject to adjustment as set forth below:
 - (a) Seller shall have the right to increase the Net Contract Capacity up to an additional **10,000 kW** (the “Expansion”), for a potential total Generating Facility size of **15,000 kW**. Seller may elect to develop the Expansion in multiple phases (an “Expansion Phase”). To exercise its right to increase the Net Contract Capacity, Seller must do all of the following:
 - (1) On or before the Final Configuration Date, provide:
 - (i) A Notice to SCE of Seller’s Expansion election, including a specification of the size of the Expansion and the total Net Contract Capacity, in kW, which Seller elects to develop;
 - (ii) A specification of the number of Expansion Phases which Seller plans to install and the calendar year in which each Expansion Phase will be completed.
 - (iii) A revised Exhibit A describing the Generating Facility, including the Expansion; and
 - (iv) A revised Milestone Schedule in the form of Exhibit F including the Expansion; and
 - (2) Post with SCE a Development Fee for any Expansion Phase, as provided in Section 3.03(a); and

- (b) The Net Contract Capacity may be subject to reduction as set forth in Section 3.03(d).
- (v) Expected Annual Net Energy Production:
 - (a) If Net Contract Capacity is equal to 5,000 kW, the Expected Annual Net Energy Production shall be as follows:

<i>Term Year</i>	<i>Expected Annual Net Energy Production, kWh</i>
1	18,396,000
2 thru 15	36,792,000

- (b) If Net Contract Capacity is adjusted pursuant to Special Condition A(iv)(a) or (b) above, the Expected Annual Net Energy Production shall be the value calculated in accordance with the following formula:

EXPECTED ANNUAL NET ENERGY PRODUCTION

= [A + ((B - A) x E)] x C x D

Where A = Net Contract Capacity at the beginning of the prior Term Year in kW. The value of "A" is zero when the calculation is being performed for the first Term Year.

B = Net Contract Capacity at the beginning of the current Term Year in kW.

C = 84.0% capacity factor.

D = 8,760 hours unless the calculation is being performed for the last Term Year in which case the value of this factor "D" shall be the number of hours in the last Term Year.

E = 50% adjustment factor.

B. Startup Deadline.

The Startup Deadline shall be **December 31, 2007**, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties.

C. Firm Operation Deadline.

- (i) The Firm Operation Deadline for the Initial Phase shall be the date that is twelve (12) months after Initial Operation, or as may be agreed to in a writing signed by both Parties.
- (ii) The Firm Operation Deadline for any Expansion Phase shall be on December 31 of any calendar year selected by Seller in accordance with Special Condition A(iv)(a)(ii), but in no event later than **December 31, 2009**, or as may be agreed to in a writing signed by both Parties.

D. 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 **fifteen (15) years** from the later of the following:

- (i) The month of the Firm Operation Deadline for the Initial Phase if the Generating Facility consists of only the Initial Phase; or
- (ii) The earlier of:
 - (a) The month of the Firm Operation Deadline for the last of the Expansion Phases to be completed; or
 - (b) December 31, 2009.

E. Energy Price.

The Energy Price is fifty-four dollars (**\$54.00**) per MWh.

F. Performance Assurance Amount.

One hundred fifty dollars (**\$150**) per kW of Net Contract Capacity.

G. Seller's Guarantor.

As of the Effective Date, not applicable.

H. ISO Change Cost Threshold Amount.

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

$$\text{ISO CHANGE COST THRESHOLD AMOUNT} = A \times B \times C$$

Where A = Expected Annual Net Energy Production set forth in Special Condition A(v) in kWh.

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

C = Two percent (2%).

*** End of Special Conditions ***

ARTICLE ONE. DEFINITIONS

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

- 1.01 “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.
- 1.02 “Agreement” has the meaning set forth in the Preamble.
- 1.03 “Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
- 1.04 “Arbitrator” has the meaning set forth in Article 12.
- 1.05 “Authority to Construct” has the meaning set forth in Section 2.02(c)(ii).
- 1.06 “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;
 - (e) Is generally unable to pay its debts as they fall due.
- 1.07 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank 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.
- 1.08 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any

- accounting construct counted toward resource adequacy requirement, associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term. An example of a Capacity Attribute would be an “ACAP” credit, or “Available Capacity” credit as defined in the ISO’s Market Design ‘02 Proposal or any subsequent ISO Tariff incorporating such similar terms.
- 1.09 “CEC” means the California Energy Commission.
- 1.10 “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.
- 1.11 “Change in ISO Tariff” means that the ISO Tariff has been changed and such change has a material 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.
- 1.12 “Claiming Party” has the meaning set forth in Section 5.02.
- 1.13 “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.
- 1.14 “Collateral Assignment Agreement” has the meaning set forth in Section 6.04.
- 1.15 “Conditional Use Permit” has the meaning set forth in Section 2.02(c)(i).
- 1.16 “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.
- 1.17 “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.
- 1.18 “CPUC” means the California Public Utilities Commission.

- 1.19 “CPUC Approval” means that the CPUC has issued a final decision, no longer subject to appeal, without conditions or modifications unacceptable to either Party, that:
- (a) Approves as reasonable all aspects of the solicitation for renewable power which resulted in this Agreement and of SCE’s conduct with respect to the solicitation;
 - (b) Finds that any electric energy sold or dedicated to SCE pursuant to this Agreement (hereinafter, “Agreement Procurement”) constitutes procurement by SCE from an ERR for purposes of determining SCE’s compliance with any obligation that it may have to procure from ERRs pursuant to the RPS Legislation, or other applicable law concerning the procurement of electric energy from renewable energy resources;
 - (c) Finds that all Agreement Procurement counts, in full and without condition, toward any annual procurement target or incremental procurement target established by the RPS Legislation or the CPUC which is applicable to SCE;
 - (d) Finds that all Agreement Procurement counts, in full and without condition, toward the requirement in the RPS Legislation that SCE procure 20% (or such other percentage as may be established by law) of its retail sales from ERRs by 2017 (or such other date as may be established by law); and
 - (e) Finds that this Agreement, and SCE’s entry into this Agreement is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to this Agreement, subject only to further review with respect to the reasonableness of SCE’s administration of this Agreement.

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

- 1.20 “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.
- 1.21 “Daily Delay Liquidated Damages” has the meaning set forth in Section 3.03(b).
- 1.22 “Defaulting Party” has the meaning set forth in Section 6.01.
- 1.23 “Delivered Amounts” means the Metered Amounts less Delivery Losses.

- 1.24 “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 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; or for a Generating Facility outside SCE’s service territory, the transmission loss factor assigned to such Generating Facility by the Transmission Provider to account for electrical losses from the high voltage side of the Generating Facility’s substation bus bar to the ISO Grid; and
 - (c) Electrical losses determined by utilizing the GMM, or TMM if applicable, assigned to the Generating Facility.
- 1.25 “Delivery Point” means ISO Zone SP-15. Notwithstanding anything to the contrary in Section 11.01, 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.
- 1.26 “Demonstrated Net Contract Capacity” has the meaning set forth in Section 3.03(d).
- 1.27 “Demonstration Hour” means the date and hour selected by Seller, on or before any applicable Firm Operation Deadline, during which Seller claims it has demonstrated the applicable Net Contract Capacity.
- 1.28 “Development Fee” means the fee described in Section 3.03(a).
- 1.29 “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.
- 1.30 “Early Termination Date” has the meaning set forth in Section 6.02(a).

- 1.31 “Effective Date” has the meaning set forth in the Preamble.
- 1.32 “Energy Payment” has the meaning set forth in Section 4.02(b).
- 1.33 “Energy Payment Allocation Factor” has the meaning set forth in Exhibit J.
- 1.34 “Energy Price” means the energy price set forth in Special Condition E.
- 1.35 “Energy Replacement Damage Amount” has the meaning set forth in Section 3.04(b).
- 1.36 “Environmental Attributes” mean any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributed to or associated with the Generating Facility and any electric energy produced therewith during the Term. 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 (CO₂), methane (CH₄) 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;
 - (c) The reporting rights, such as, but not limited to, Green Tag Reporting Rights, to these avoided emissions. 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.

Environmental Attributes do not include:

- (x) Production Tax Credits associated with the construction or Operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation obligation; or
- (y) Fuel-related subsidies or tipping fees that may be paid to Seller to accept certain fuels, or local subsidies received by the Seller for the destruction of

particular pre-existing pollutants or the promotion of local environmental benefits.

- 1.37 “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.
- 1.38 “ERR” means a generating facility that qualifies as an eligible renewable energy resource for purposes of the RPS Legislation.
- 1.39 “Event of Default” has the meaning set forth in Section 6.01.
- 1.40 “Event of Deficient Energy Deliveries” has the meaning set forth in Section 3.04(a)(ii).
- 1.41 “Event of Excess Deliveries” has the meaning set forth in Section 6.01(m).
- 1.42 “Exercise Notice” has the meaning set forth in Section 8.05.
- 1.43 “Expansion” and “Expansion Phase” has the meaning set forth in Special Condition A(iv)(a). Unless specifically provided otherwise, references to the Expansion include any Expansion Phases.
- 1.44 “Expected Annual Net Energy Production” means the Generating Facility’s expected annual Metered Amounts as set forth in Special Condition A(v).
- 1.45 “Extraordinary SCE Force Majeure” means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting electric energy for more than ten (10) consecutive days during which Seller was prepared and able to Schedule at the Delivery Point.
- 1.46 “FERC” means the Federal Energy Regulatory Commission.
- 1.47 “Final Configuration Date” means the date that is twelve (12) months from the Effective Date.
- 1.48 “Firm Operation Deadline” has the meaning set forth in Special Condition C.
- 1.49 “Force Majeure” means any occurrence that was not anticipated as of the Effective Date:
- (a) That, in whole or in part, delays a Party’s performance under this Agreement, causes a Party to be unable to perform its obligations, or prevents a Party from complying with or satisfying the conditions of this Agreement;
 - (b) That is not within the control of that Party; and

- (c) That 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 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.

None of the following shall constitute a Force Majeure under this Agreement:

- (x) The lack of wind, sun or other fuel source of an inherently intermittent nature; nor
- (y) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the ISO; *provided that*, 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.

1.50 "Forward Settlement Amount" means any amount by which the Non-Defaulting Party's Losses exceed Gains. If the Non-Defaulting Party's Gains exceed its Losses, then the Forward Settlement Amount shall be zero dollars (\$0). The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

1.51 "Fuel Supply Agreement" means any agreement between Seller and a third party for the supply of fuel to the Generating Facility.

1.52 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it as of the Early Termination Date, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, expressed in U.S. dollars and determined in a commercially reasonable manner. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referents prices for renewable power 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 include value of Environmental Attributes.

1.53 "Generating Facility" means Seller's electric generating facility as more particularly described in Exhibit A, including any Expansions, together with all materials,

- equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.
- 1.54 “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.
- 1.55 “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.
- 1.56 “Governmental Charges” has the meaning as set forth in Section 9.02.
- 1.57 “Guarantor” has the meaning set forth in Special Condition G.
- 1.58 “Guaranty Agreement” means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit H.
- 1.59 “Initial Operation” means the date selected by Seller in accordance with Section 2.03(b).
- 1.60 “Initial Phase” means the 5,000 kW of Net Contract Capacity set forth in Special Condition A(iv).
- 1.61 “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.
- 1.62 “ISO Approved Meter” has the meaning set forth in Section 3.05.

- 1.63 “ISO Change Cost” has the meaning set forth in Section 11.02(a).
- 1.64 “ISO Change Cost Payment” means a payment for any Term Year, either from SCE to Seller or from Seller to SCE, due to an ISO Change Cost as described in Section 11.02(b).
- 1.65 “ISO Change Cost Threshold Amount” means the threshold amount in Special Condition H at the time any ISO Change Cost Payment is calculated pursuant to Exhibit M.
- 1.66 “ISO Grid” means the system of transmission lines and associated facilities of the participating transmission owners that have been placed under the ISO’s operational control.
- 1.67 “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.
- 1.68 “kW” means a kilowatt of electric energy generating capacity.
- 1.69 “kWh” means a kilowatt-hour of electric energy.
- 1.70 “Lease” means one or more agreements whereby Seller leases the Site(s) described in Special Condition A(ii) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
- 1.71 “Lender” means any financial institution(s) that provide(s) development, bridge, construction or permanent debt financing or refinancing for the Generating Facility to Seller.
- 1.72 “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.
- 1.73 “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 expires or terminates, or fails or ceases to be in full force and effect at any time, in any such case without replacement;
 - (e) The issuer of such Letter of Credit becomes Bankrupt; *provided, however*, 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; or
 - (f) The Letter of Credit has been drawn upon by SCE and Seller has failed to reinstate the Letter of Credit to the amount set forth in Special Condition F within five (5) Business Days of any drawing (partial or otherwise).
- 1.74 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it as of the Early Termination Date, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, expressed in U.S. dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referents for renewable power 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 include the value of Environmental Attributes.
- 1.75 “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 produce, 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.

- 1.76 “Lost Output Report” means the a report of Lost Output prepared in accordance with the procedures set forth in Section 3.16 and Exhibit L.
- 1.77 “Market Price” means the ISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance energy delivered to the Delivery Point, as such price or successor price is defined in the ISO Tariff Appendix A, that 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.
- 1.78 “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, as measured by the ISO Approved Meter.
- 1.79 “Milestone Schedule” means the Seller’s schedule to develop the Generating Facility as set forth in Exhibit F, including any revisions thereto for Expansion Phases.
- 1.80 “Moody’s” means Moody’s Investor Services, Inc.
- 1.81 “MWh” means a megawatt-hour of electric energy.
- 1.82 “Net Contract Capacity” means the electrical generating capacity that Seller commits to install at the Site as set forth in Special Condition A(iv) and demonstrate as set forth in Exhibit K, subject to reduction as set forth in Section 3.03(d).
- 1.83 “Non-Defaulting Party” has the meaning set forth in Section 6.02.
- 1.84 “Notice” means notices, requests, statements or payments provided in accordance with Section 10.06 and Exhibit B.
- 1.85 “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.
- 1.86 “Operate,” “Operating” or “Operation” means to provide (or the provision of) 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.
- 1.87 “Operations Agreement” has the meaning set forth in Section 8.05.
- 1.88 “Party” or “Parties” have the meaning set forth in the Preamble.

- 1.89 “Performance Assurance” means collateral in the amount set forth in Special Condition F for Seller’s performance during the Term in the form of either cash, a Letter of Credit or other security approved by SCE.
- 1.90 “Product” means:
- (a) All electric energy produced by the Generating Facility, net of Station Use and Delivery Losses; and
 - (b) All associated Environmental Attributes and Capacity Attributes.
- 1.91 “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.
- 1.92 “RPS Legislation” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*
- 1.93 “S&P” means the Standard & Poor’s Rating Group.
- 1.94 “SCE” has the meaning set forth in the Preamble.
- 1.95 “SCE Mitigation Rights” has the meaning set forth in Section 11.04(a).
- 1.96 “Schedule,” “Scheduled” or “Scheduling” means the action of Seller and SCE, or their designated representatives, including any third party provider of scheduling services, if applicable, of notifying, requesting, and confirming to each other or to the ISO, as appropriate, the “ISO Approved Quantity” of electric energy from the Generating Facility being delivered by Seller to SCE in the form of Scheduling Coordinator Trades for any given day, hour, or relevant period at the Delivery Point, all in accordance with the provisions of Section 3.02. The “ISO Approved Quantity” of electric energy means the quantity of Seller’s Scheduling Coordinator’s schedule request as approved by the ISO in its final schedule published in accordance with the ISO Tariff.

- 1.97 “Scheduled Amounts” means the Scheduled quantity, expressed in kWh, of electric energy in the form of Scheduling Coordinator Trades confirmed to SCE on any given day, hour, or relevant period at the Delivery Point.
- 1.98 “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.
- 1.99 “Scheduling Coordinator Trades” means Scheduling Coordinator to Scheduling Coordinator trades of electric energy by the Seller, or Seller’s authorized agent, to SCE in accordance with the ISO Tariff.
- 1.100 “Security Interests” has the meaning set forth in Section 8.04(a).
- 1.101 “Selected Date” has the meaning set forth in Section 2.03(b).
- 1.102 “Seller” has the meaning set forth in the Preamble.
- 1.103 “Seller’s Annual Energy Delivery Obligation” has the meaning set forth in Section 3.04(a).
- 1.104 “Seller’s Actual Revenue” means the total of payments received by Seller pursuant to Article Four, excluding any payment adjustments pursuant to Section 4.02(c).
- 1.105 “Seller’s Adjusted Revenue” has the meaning set forth in Exhibit M.
- 1.106 “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.
- 1.107 “Settlement Interval” means a ten (10) minute time interval beginning on the hour (e.g., 12:00 to 12:10, 12:10 to 12:20, etc.).
- 1.108 “Site” means the real property on which the Generating Facility is, or will be located, as further described in Special Condition A(ii) and Exhibit A or as adjusted in accordance with Section 3.07.
- 1.109 “Site Control” means that Seller satisfies the criteria of Section 3.06(a).
- 1.110 “Startup Deadline” means the date as set forth in Special Condition B by which Seller must have commenced Initial Operation as set forth in Section 2.03(b), subject to extension as provided in this Agreement.
- 1.111 “Station Use” means electric energy produced by the Generating Facility that is used to power the auxiliary equipment required to Operate the Generating Facility

- including, but not limited to, cooling tower fans, boiler and condensate feed pumps, lubricating oil systems, plant lighting, fuel handling systems and control systems.
- 1.112 “Step-In Rights” has the meaning set forth in Section 8.05.
- 1.113 “Supplemental Lost Output” has the meaning set forth in Section 3.16(c).
- 1.114 “Supplemental Lost Output Report” has the meaning set forth in Section 3.16(c).
- 1.115 “Term” has the meaning used in Special Condition D.
- 1.116 “Term Year” means:
- (a) A twelve (12) month period beginning on the commencement of the Term as set forth in Section 2.02(a); *provided that*, the commencement of the Term is the first day of a calendar month, and each successive twelve (12) month period thereafter;
 - (b) If the commencement of the Term is not the first day of a calendar month, a twelve (12) month period beginning on the first day of the calendar month immediately following commencement of the Term and each successive twelve (12) month period thereafter; and
 - (c) Notwithstanding subsections (a) and (b) above, the last Term Year shall end no later than the end of the Term as provided in Special Condition D.
- 1.117 “Termination Payment” has the meaning set forth in Section 6.03.
- 1.118 “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.
- 1.119 “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.
- 1.120 “TOD Period(s)” means the time of delivery period(s) set forth in Exhibit J.
- 1.121 “TOD Period Energy Payment” has the meaning set forth in Section 4.02(b).

- 1.122 “Transmission Provider” means any entity or entities responsible for the interconnection of the Generating Facility with the ISO Grid or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
- 1.123 “Unincluded Capacity” has the meaning set forth in Section 3.03(d).
- 1.124 “Uninstructed Imbalance Energy” has the meaning set forth in Appendix A of the ISO Tariff.
- 1.125 “WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States and Canada.
- 1.126 “West of Devers Transmission Upgrades” means the construction of the SCE transmission upgrades described in Exhibit O.
- 1.127 “Workbook” has the meaning set forth in Exhibit L.

*** 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 as described herein.

2.02 Obligations Prior to Commencement of Term**(a) CPUC Filing and Approval of this Agreement.**

Within forty-five (45) days of the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall seek such approval expeditiously, including promptly responding to any requests for information related to the request for approval from the CPUC. Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE shall have no obligation to seek rehearing or to appeal a CPUC decision which disapproves the Agreement or fails to contain findings required for CPUC Approval.

(b) Seller's Interconnection Application.

As soon as practicable, but in any event no later than ten (10) days after the Effective Date, Seller shall submit in accordance with applicable tariffs and regulations an application(s) or other appropriate request(s) to interconnect the Initial Phase, including any applicable Expansion, to the applicable Transmission Provider's electric system and, if applicable, to deliver electric energy from the Generating Facility to the Delivery Point. Seller shall thereafter exercise diligence in proceeding with the application process in order to obtain a FERC-accepted interconnection agreement and any transmission, distribution or other service agreement required to deliver electric energy from the Initial Phase and any applicable Expansion to the Delivery Point.

(c) Seller's Regulatory and Governmental Filings.

Within twelve (12) months of the Effective Date, Seller shall file all of the following:

- (i) An application or applications, or other appropriate request or requests with the appropriate state or local authority for a permit authorizing Seller to construct and Operate the Generating Facility and any Expansion (the "Conditional Use Permit");

- (ii) An application or other appropriate request with the appropriate Air Pollution Control District for determination that construction of the Generating Facility and any Expansion is authorized under applicable air pollution control laws and regulations (the “Authority to Construct”);
- (iii) An application or other appropriate request to the CEC for CEC Certification and Verification for the Initial Phase and any Expansion.

Seller shall seek the Conditional Use Permit, the Authority to Construct and CEC Certification and Verification expeditiously, including promptly responding to any requests for information related to the Conditional Use Permit, the Authority to Construct and CEC Certification and Verification from the requesting authority.

2.03 Conditions Precedent to Commencement of Term

(a) Commencement of Term

The Term shall commence on the last to occur of the following:

- (i) This Agreement has been duly executed by authorized representatives of Seller and SCE;
- (ii) CPUC Approval has been obtained or waived by SCE, as provided herein;
- (iii) CEC Certification and Verification has been obtained; or
- (iv) Initial Operation.

(b) Initial Operation.

Initial Operation shall be the date selected by Seller (the “Selected Date”) to begin Scheduling and delivering Product to SCE. Seller shall provide at least three (3) Business Days advance Notice to SCE of the Selected Date. The Selected Date shall be no more than ninety (90) days from the first date that the Generating Facility operates in parallel with the applicable Transmission Provider’s electric system. In addition, as of the Selected Date:

- (i) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider’s electric system; and
- (ii) Seller shall be Scheduling electric energy to SCE at the Delivery Point.

2.04 Termination Rights of the Parties.**(a) Termination Rights of Both Parties.**

Either Party shall have the right to terminate the Agreement on written 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 CEC Certification and Verification, Conditional Use Permit or Authority to Construct have not been obtained within twenty four (24) months of the Effective Date and a Notice of termination is given on or before the end of the twenty sixth (26th) month after the Effective Date.

(b) Termination Rights of Seller.

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

- (i) If Seller is unable to execute Fuel Supply Agreement(s) that provide for fuel sufficient to deliver the Net Contract Capacity and a Notice of termination is given on or before the end of the twelfth (12th) month after the Effective Date;
- (ii) With respect to any Expansion, Seller may terminate the Expansion if Seller is unable to execute Fuel Supply Agreement(s) that provide for fuel sufficient to deliver the Net Contract Capacity above the Initial Phase and a Notice of termination is given on or before the end of the thirtieth (30th) month after the Final Configuration Date.
- (iii) If Seller reasonably determines based upon the results of any study or analysis of congestion by the ISO or the Seller's Transmission Consultant, that, without transmission upgrades, curtailments of Generating Facility deliveries during the Term will regularly exceed ten percent (10%) of the Expected Annual Net Energy Production and a Notice of termination is given within thirty (30) days of the later of:

- (1) The end of the sixth (6th) month after the Effective Date, or
 - (2) The date that a completed system impact study performed pursuant to the ISO Tariff or any Transmission Providers tariff is sent to Seller; or
- (c) Termination Rights of SCE.

On or before the date that is sixty (60) days after the date Seller provides to SCE the final interconnection facilities study for the Generating Facility issued by the ISO or any Transmission Provider, SCE shall have the right to terminate the Agreement on written Notice to Seller which shall be effective five (5) Business Days after such Notice is given in the following circumstances:

- (i) If as a result of the ISO's or any Transmission Provider's issuance of a final interconnection facilities study for the Generating Facility, the total cost of transmission or distribution upgrades or new transmission or distribution facilities to SCE, that are not reimbursed or paid by Seller, will exceed one million five hundred thousand dollars (\$1,500,000); or
 - (ii) If the ISO requires SCE to procure transmission service from any other Transmission Provider to allow Seller to Schedule electric energy to SCE and the cost for such transmission service is not reimbursed or paid by Seller.
- (d) Uncured Defaults.

In the event of an uncured Event of Default or an Event of Default for which there is no cure, the Non-Defaulting Party may terminate this Agreement as set forth in Section 6.02.

- (e) End of Term

At the end of the Term as set forth in Special Condition D, this Agreement shall automatically terminate.

2.05 Obligations Surviving Termination.

- (a) Obligations of Both Parties Surviving Termination.

The obligations that are intended to survive the termination of this Agreement are all of those obligations which arise from Seller's or SCE's covenants, representations, and warranties applicable to, or to be performed, at or during

any time period prior to, or as a result of, such termination, including, without limitation:

- (i) Seller's obligation to pay the Energy Replacement Damage Amount in accordance with Section 3.04;
 - (ii) The obligation to make a Termination Payment in accordance with Section 6.03;
 - (iii) Any indemnity obligations that may arise under Section 10.03;
 - (iv) The obligation of confidentiality as set forth in Section 10.08;
 - (v) The right to pursue remedies under Section 6.02;
 - (vi) The right to receive a termination payment under Section 6.03; and
 - (vii) The limitation of damages under Article Seven.
- (b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from the Generating Facility after Certain Terminations of the Agreement.

If Seller terminates the Agreement as provided in Section 2.04(a)(ii), Section 2.04(b)(i), Section 2.04(b)(ii) or Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), Seller may not sell, or enter into an agreement to sell, electric energy, Environmental Attributes, or Capacity Attributes associated with or attributable to a generating facility installed at the Site to a party other than SCE for a period of two (2) years following the effective date of such termination by Seller.

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 has provided SCE with a written offer to sell the electric energy, Environmental Attributes, and Capacity Attributes 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 of SCE's receipt thereof.

*** End of ARTICLE TWO ***

ARTICLE THREE. SELLER'S OBLIGATIONS

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

Seller shall use best efforts and Prudent Electrical Practices to Schedule and convey the *entire* Metered Amounts during the Term to SCE.

In addition, Seller shall dedicate and convey any and all Environmental Attributes and Capacity Attributes during the Term to SCE and SCE shall be given sole title to all Capacity and Environmental Attributes during the Term.

SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity and Environmental Attributes to third parties. SCE shall be responsible for any costs associated with SCE's accounting for or otherwise claiming Environmental and Capacity Attributes.

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

Seller shall have the right to sell into the ISO real time market any electric energy generated by the Generating Facility before the beginning of the Term and Environmental and Capacity Attributes related to such electric energy generation, and to retain all proceeds of such sales.

Notwithstanding anything to the contrary contained in this Agreement, 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 Seller's Obligations to Schedule and Deliver.

Seller shall be responsible for providing or securing any and all Scheduling, interconnection and transmission service rights (including all regulatory approvals) required to effect delivery and Scheduling of the electric energy from the Seller's Generating Facility at the Delivery Point in the form of Scheduling Coordinator Trades.

Seller shall pay all Transmission Provider, Scheduling Coordinator 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 the Scheduling and delivery of electric energy from Seller's Generating Facility at the Delivery Point.

Seller shall Schedule or cause to be Scheduled the electric energy generated by the Generating Facility in accordance with all applicable ISO requirements and the provisions of Exhibit C. If there is a difference between the ISO requirements and Exhibit C, Seller shall be responsible for following the more stringent requirements and conforming to the earlier of any filing deadlines. Promptly after the Effective Date, SCE and Seller shall meet and attempt in good faith to negotiate an agreement for SCE to provide, consistent with applicable law, tariffs and protocols, at least day-ahead advance notice of any requests that Seller curtail deliveries from the Generating Facility related to West of Devers Transmission Upgrades-related construction activity.

3.03 Development Fee.

(a) Posting the Development Fee.

Seller shall post and thereafter maintain, subject to the provision to increase the Development Fee set forth in the next paragraph, a Development Fee equal to twenty dollars (\$20) for each kilowatt of Net Contract Capacity specified pursuant to Special Condition A(iv) for the Initial Phase. One-half of the Development Fee shall be posted within thirty (30) days following the Effective Date of this Agreement, with the remainder to be posted within thirty (30) days following CPUC Approval.

If Seller elects to increase the Net Contract Capacity pursuant to Special Condition A(iv)(a), Seller shall, within thirty (30) days of giving Notice of such increase, post and thereafter maintain an additional Development Fee equal to twenty dollars (\$20) for each kilowatt of increased Net Contract Capacity.

SCE may, but is not obligated to, extend the foregoing deadlines to post the Development Fee.

The Development Fee shall be held by SCE as security for Seller maintaining adequate progress in the development of the Generating Facility and any Expansion in accordance with the Milestone Schedule and installing and demonstrating the Net Contract Capacity by the applicable Firm Operation Deadline.

The Development Fee shall be in the form of either a cash deposit or a Letter of Credit. If Seller establishes the Development Fee 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 Development Fee for Failure to Meet Startup Deadline; Extension of the Startup Deadline.

Subject to Seller's right to extend the Startup Deadline as provided in this Section 3.03(b), in the event that Initial Operation does not occur on or before the Startup Deadline, SCE shall be entitled to retain the entire Development Fee and terminate this Agreement.

Neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination; *provided that*, Seller may not sell, or enter into an agreement to sell, electric energy, Environmental Attributes, or Capacity Attributes associated with or attributable to a generating facility installed at the Site to a party other than SCE for a period of two (2) years following the effective date of a termination of this Agreement by SCE for Seller's failure to achieve Initial Operation on or before the Startup Deadline.

The prohibition on contracting and sale in the preceding paragraph shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller has provided SCE with a written offer to sell the electric energy, Environmental Attributes, and Capacity Attributes 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 of SCE's receipt thereof.

Seller may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to one percent (1%) of the Development Fee per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the date of Initial Operation ("Daily Delay Liquidated Damages").

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

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

The Daily Delay Liquidated Damages payments applicable to days included in any Startup Deadline extension shall be nonrefundable and are not to be considered as part of the Development Fee.

Seller shall be entitled to a refund of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Startup Deadline was actually extended.

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

(c) Full Return of Development Fee.

The Development Fee for the Initial Phase and each Expansion Phase shall be returned to Seller in each of the following circumstances:

(i) Seller Demonstrates Development of the Generating Facility and Installation of Full Net Contract Capacity.

Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.03(b), if on or before the Firm Operation Deadline of the Initial Phase or the Firm Operation Deadline of any Expansion Phase, Seller demonstrates that the Generating Facility has been developed in accordance with the Generating Facility description set forth in Exhibit A and Seller demonstrates that Seller has installed the required Net Contract Capacity as evidenced by Metered Amounts in any one (1) hour interval in accordance with the procedure set forth in Exhibit K, SCE shall return the Development Fee to Seller in accordance with the procedure set forth in Exhibit K.

(ii) Certain Terminations of the Agreement.

If this Agreement is terminated in accordance with Sections 2.04(a), 2.04(b), 2.04(c) or 5.05, SCE shall return the Development Fee to Seller; *provided, however*, that a termination under Section 5.05 shall only entitle Seller to a return of the Development Fee including any fees posted for Expansion Phases if it is based upon a Force Majeure which prevents Seller from achieving the conditions necessary to obtain a return of the Development Fee and which occurs prior to SCE providing Notice to Seller that Seller has not complied with conditions necessary to achieve a return of the Development Fee.

If Seller's entitlement to a return of the Development Fee is based upon this Section 3.03(c)(ii), SCE shall return the Development Fee to Seller in accordance with the procedure set forth in Exhibit K.

(d) Deficient Installation of Net Contract Capacity; Partial Forfeiture and Partial Return of the Development Fee.

If, on or before a Firm Operation Deadline, Seller satisfies all conditions set forth in Section 3.03(c) above, except that Seller is only able to demonstrate a

portion of the Net Contract Capacity for the Initial Phase, or Expansion Phase, as applicable, as evidenced by Metered Amounts in any one (1) hour interval (the “Demonstrated Net Contract Capacity”), then Seller shall only be entitled to a return of the portion of the Development Fee in accordance with the procedure set forth in Exhibit K equal to:

- (i) The product of \$20 per kilowatt times the kilowatts of Demonstrated Net Contract Capacity;
- (ii) Less: All Development Fees that have already been remitted to Seller; and
- (iii) Less: All amounts of Development Fee that Seller was not previously paid because Seller was not able to demonstrate that it achieved the relevant Net Contract Capacity by the applicable Firm Operation Deadline(s).

Seller shall forfeit and SCE shall be entitled to retain the balance of the Development Fee plus any interest earned on the portion of the Development Fee that is not refunded to Seller.

If Seller is unable to demonstrate the ability of the Generating Facility to deliver the Net Contract Capacity as set forth in Special Condition A(iv), the Net Contract Capacity shall be reduced as of the applicable Firm Operation Deadline by the amount of Net Contract Capacity not demonstrated (the “Unincluded Capacity”) and the Expected Annual Net Energy Production shall be adjusted pursuant to Special Condition A(v).

If Seller is entitled to a return of a portion of the Development Fee pursuant to this Section 3.03(d), SCE shall provide Notice to Seller and return the Development Fee to Seller in accordance with the procedure set forth in Exhibit K.

In the event SCE determines, pursuant to this Section 3.03(d) and the procedure set forth in Exhibit K, that Seller is entitled to only a partial refund of the Development Fee, neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to Unincluded Capacity; *provided that*, Seller may not 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 installed at the Site 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 Development Fee pursuant to Exhibit K.

The prohibition on contracting and sale in the preceding paragraph shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller has provided SCE with a written offer to sell the electric energy, Environmental Attributes, and Capacity Attributes 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 of SCE's receipt thereof.

3.04 Seller's Annual Energy Delivery Performance Requirements.

(a) Performance Requirements.

During the Term, Seller shall be subject to the following electric energy delivery performance requirements and damages for failure to perform as set forth below:

(i) Seller's Annual Energy Delivery Obligation.

"Seller's Annual Energy Delivery Obligation" shall be equal to ninety percent (90%) of the Expected Annual Net Energy Production identified in Special Condition A(v);

(ii) Event of Deficient Energy Deliveries.

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

(b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.04(a)(ii) above, the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's Annual Energy Delivery Obligation 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.

Within ninety (90) days of the end of the applicable Term Year, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit E, 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 workpapers, and source data.

Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation of the Energy Replacement Damage Amount owing, and either pay the entire Energy Replacement Damage Amount claimed by SCE or pay any undisputed portion and provide Notice to SCE of the portion it disputes along with a detailed explanation of, and rationale for, Seller's calculation methodology, annotated workpapers, and source data.

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.

Such information may be provided pursuant either to the Non-Disclosure Agreement attached at Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

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

(c) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount, Seller shall remain obligated to Schedule and convey all electric energy generated by the Generating Facility and to dedicate and convey all Environmental Attributes and Capacity Attributes to SCE during the Term, as provided in Section 3.01.

3.05 Metering.

- (a) Seller shall install and pay for any and all metering services and related equipment required by SCE, the ISO, the Transmission Provider and Seller's Scheduling Coordinator. Such equipment shall include, but not be limited to, an ISO approved revenue quality meter or meters, ISO approved data processing gateway, telemetering equipment and data acquisition services sufficient for recording and reporting all electric energy produced by the Generating Facility less Station Use (collectively the "ISO Approved Meter").

- (b) Subject to Section 3.13, Seller shall grant SCE reasonable access to the meter(s) for meter readings, testing and any purpose necessary to effectuate this Agreement.
- (c) Prior to Initial Operation, Seller shall provide instructions to the ISO granting authorizations or other documentation sufficient to provide SCE with access to the ISO Approved Meter in addition to Seller's settlement data on OMAR. Seller shall promptly inform SCE of meter quantity changes after being informed of any such changes by the ISO.

3.06 Site Control.

- (a) At all times after the Final Configuration Date, Seller shall have Site Control, which means that Seller shall:
 - (i) Own the Site;
 - (ii) Be the lessee under a Lease;
 - (iii) Be the holder of a right-of-way grant or similar instrument; 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 Site and Generating Facility.
- (b) Seller shall provide SCE with prompt written Notice of any change in the status of Seller's Site Control.

3.07 Site Location.

This Agreement is Site specific as set forth in Special Condition A(ii). However, on or before the Final Configuration Date, Seller may change the location of the Site based on the results of the Geothermal Reservoir Report; *provided that*, the interconnection point with the Transmission Provider is not changed. Seller shall promptly provide a revised Exhibit A describing any new Site in the event Seller elects to change the Site location.

3.08 Design.

At no cost to SCE, Seller shall be responsible to:

- (a) Design and construct the Generating Facility.
- (b) Acquire all permits and other approvals necessary for the construction and Operation of the Generating Facility.

- (c) Provide to SCE, at least thirty (30) days prior to the anticipated Initial Operation date, the following Generating Facility information:
 - (i) Process flow diagrams ;
 - (ii) Piping and instrumentation diagrams ;
 - (iii) Site plan drawings;
 - (iv) General arrangement drawings;
 - (v) Electrical single line diagrams describing generation, loads, metering and protection; and
 - (vi) Major electrical equipment specifications.
- (d) Provide to SCE, not less than thirty (30) days prior to interconnection of any Expansion Phase, the information set forth in Section 3.08(c) above along with all specifications and drawings pertaining to any such Expansion.
- (e) Provide SCE advance Notice at the earliest practicable time of any proposed changes in Seller's Generating Facility with such Notice to include the information set forth in Section 3.08(c) above, along with all specifications and drawings pertaining to any such changes.

3.09 Operation.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) 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: real and reactive power production, changes in Operating status, protective apparatus operations, and any unusual conditions found during inspections. Changes in generator output setting shall also be logged for Seller's generator(s) if it is "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, kilovars 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 of any Notice from SCE requesting that the information be provided.

- (c) Seller shall give Notice to SCE of Seller's:
- (i) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following four month period by January 1, May 1, and September 1 of each year during the Term;
 - (ii) Forecast of the timing and duration of scheduled maintenance and Seller's forecast of daily Delivered Amounts from the Generating Facility for the following calendar year by September 1 of each year during the Term;
 - (iii) Scheduled outages by using SCE's automated telephone-based Interactive Voice Response System (IVR), or its replacement, with as much advanced notice as practicable, at the telephone number(s) listed in Exhibit B; and
 - (iv) Unexpected or unscheduled outages by telephoning SCE's Generation Operations Center as soon as practicable, at the telephone number(s) listed in Exhibit B.

With respect to Sections 3.09(c)(i) and 3.09(c)(ii) above, Seller shall have no liability to SCE for damages caused by inaccurate generation forecasts; *provided that*, Seller uses commercially reasonable efforts in developing and submitting such forecasts to SCE.

- (d) Seller shall promptly prepare and provide to SCE upon request 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 facilities under contract with such investor-owned utilities to supply electric energy.
- (e) Seller shall comply with the Scheduling requirements and procedures set forth in Section 3.02 at its sole expense.
- (f) At least thirty (30) days prior to the commencement of Operation of the Generating Facility in parallel with the Transmission Provider's electric system, Seller shall provide SCE with all facility and metering information as may be requested by SCE, including, but not limited to, the following:

For each ISO meter:

- (i) Generating Station/Unit ID,
- (ii) ISO Global Resource ID,
- (iii) ISO Meter Device ID,
- (iv) Password,
- (v) Data path (network (ECN) or modem),
- (vi) If modem, phone number,
- (vii) Copy of meter certification,
- (viii) List of any ISO metering exemptions (if any),
- (ix) Description of any compensation calculations such as transformer losses and line losses.

For the Generating Facility:

- (i) Utility transmission/distribution one line diagram,
- (ii) Physical location, address or descriptive identification,
- (iii) Latitude and longitude,
- (iv) Telephone number on site,
- (v) Telephone number of control room,
- (vi) Telephone number for operational issues,
- (vii) Telephone number for administrative issues.

3.10 Progress Reporting.

- (a) Seller shall use commercially reasonable efforts to meet the Milestone Schedule set forth in Exhibit F for the Initial Phase and any Expansion and to avoid or minimize any delays in meeting such schedule.
- (b) Seller shall provide a monthly written report of its progress toward meeting the Milestone Schedule using the form and procedures set forth in Exhibit G.

- (c) In addition to providing the monthly report set forth above, 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 for the Initial Phase or any Expansion.

3.11 No Representation by SCE.

- (a) Any review by SCE of the design, construction and Operation of the Generating Facility or interconnection facilities is solely for SCE's information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Generating Facility.
- (b) Seller shall in no way represent to any third party that any such review by SCE of the Generating Facility, including, but not limited to, any review of the design, construction and Operation of the Generating Facility or interconnection facilities by SCE, is a representation by SCE as to the economic or technical feasibility, operational capability, or reliability of the Generating Facility. Seller is solely responsible for economic and technical feasibility, operational capability, and reliability of the Generating Facility.

3.12 Provision of Information.

- (a) Seller shall promptly provide to SCE copies of 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) Seller shall include in its monthly written report submitted to SCE pursuant to Section 3.10(c), a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses between Seller and any Governmental Authority or the ISO and shall provide any such documents as may be reasonably requested on Notice from SCE.
- (c) Seller shall promptly provide to SCE copies of all applications and approvals relating to the Conditional Use Permit, the Authority to Construct, the CEC Certification and Verification and the Permit to Operate, and any additional documents relating to these matters as may be requested on Notice from SCE.
- (d) Seller shall promptly provide SCE with copies of all draft, preliminary, final and revision 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 interconnection of the

Generating Facility to the transmission system or the transmission of electric energy from the Generating Facility to the Delivery Point.

- (e) Seller shall promptly provide SCE with copies of all monthly settlement invoices Seller receives from its Scheduling Coordinator pertaining to the Generating Facility. All such settlement data may be provided pursuant either to the Non-Disclosure Agreement attached at Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.
- (f) Seller shall promptly provide SCE with copies of all Geothermal Reservoir Reports, and any revisions thereto, for the time period beginning on the Effective Date and ending on the last day of the first Term Year.
- (g) Seller shall promptly provide SCE with a copy of a Generating Facility feasibility study prepared on behalf of Seller by an independent engineer, redacted for confidential and proprietary financial and technical data.

3.13 SCE's Access Rights.

Upon at least two (2) Business Days Notice to Seller or as set forth in any tariff, 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 secured to SCE by law or its tariff schedules and rules on file with the CPUC.

3.14 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.

3.15 Obligations to Provide Notice in Event of Cessation or Termination of Service Agreements.

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

3.16 Report of Lost Output.**(a) Monthly Report.**

Commencing on the date of Initial Operation 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. The Lost Output Report shall identify the date, time, duration, cause and the amount by which the Generating Facility's output was curtailed for each Lost Output event, together with Seller's calculations in accordance with Exhibit L and Seller's statement demonstrating the Lost Output that would have been produced and delivered to SCE, but for the Lost Output event.

(b) SCE's Review.

SCE shall have thirty (30) days after receipt of Seller's monthly Lost Output Report to review Seller's calculation of Lost Output. Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify the Lost Output event and calculation of electric energy that could have been produced and delivered, but for the Lost Output event. Such information may be provided pursuant either to the Non-Disclosure Agreement attached as Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

(c) Disputes of Lost Output.

If SCE disputes Seller's calculation of Lost Output, including without limitation Seller's determination that Lost Output is attributable to the West of Devers Transmission Upgrades, 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 contention that any of the amounts claimed in Seller's Lost Output Report does not qualify as Lost Output or is not attributable to the West of Devers Transmission Upgrades. The Parties shall negotiate in good faith to resolve any dispute regarding a claim for Lost Output.

If the Parties are unable to resolve a dispute regarding a claim for Lost Output within thirty (30) days of SCE's giving the dispute Notice, either Party may submit the dispute to arbitration as provided in Article Twelve.

Seller shall have no right to claim any Lost Output that was not identified in the Lost Output Report for the month in which the Lost Output occurred; 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 of learning the facts which provide the basis for the Supplemental Lost Output claim.

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

ARTICLE FOUR. SCE'S OBLIGATIONS

4.01 Obligation to Pay.

For Seller's *full* compensation under this Agreement, SCE shall:

- (a) Make monthly Energy Payments to Seller for electric energy Scheduled by Seller during the Term calculated in the manner described in Section 4.02.
- (b) Make payments for Lost Output during any curtailment or reduction of deliveries ordered or caused by the ISO, or SCE acting as a Transmission Provider, as a direct result of construction activities associated with the West of Devers Transmission Upgrades as set forth in Section 4.02(d).

Except as set forth in Section 4.02(d), SCE shall not be obligated to pay Seller for any electric energy prior to the commencement of the Term or any electric energy that is not Scheduled as a result of any circumstance, other than gross negligence by SCE related to the Scheduling of electric energy produced by the Generating Facility, including, without limitation:

- (w) An outage of the Generating Facility;
- (x) A Force Majeure under Article Five;
- (y) A reduction or curtailment of Schedules ordered by the ISO; or
- (z) A reduction or curtailment of Schedules pursuant to the terms of an agreement with a Transmission Provider.

4.02 Payments and Adjustments.

(a) Time-Differentiated Payments.

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

As set forth in Exhibit J, 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.

(b) Energy Payment Calculations.

During the Term, SCE shall pay Seller a monthly Energy Payment equal to the sum of the monthly “TOD Period Energy Payments” for all TOD Periods in the month as set forth below.

Each of the monthly TOD Period Energy Payment amounts shall be calculated pursuant to the following formula, where “n” is the TOD Period being calculated:

$$\text{TOD PERIOD}_n \text{ ENERGY PAYMENT} = A \times B \times C$$

Where A = Energy Price specified in Special Condition E in \$/kWh (i.e., \$/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.

(c) Payment Adjustments.

If, in any Settlement Interval, a Generating Facility’s Scheduled Amount deviates from the Generating Facility’s Delivered Amount by more than plus or minus three percent ($\pm 3\%$) of the Generating Facility’s Delivered Amount, then Seller’s monthly Energy Payment may be subject to an adjustment calculated by SCE in accordance with the procedures and formulae set forth in Exhibit D. The Exhibit D payment adjustments shall *not* apply so long as:

- (i) Seller is Scheduling through an independent third party approved by SCE; or
- (ii) SCE elects to become Seller’s Scheduling Coordinator pursuant to Section 11.04(a)(ii).

(d) Payment for Lost Output Relating to West of Devers Transmission Upgrades.

SCE shall make payments to Seller for any Lost Output attributable to a reduction or curtailment of Schedules ordered by either the ISO or SCE acting in its capacity as Transmission Provider, which reduction or curtailment directly arises from the West of Devers Transmission Upgrades as described in Exhibit O.

Any payment due Seller for Lost Output relating to West of Devers Transmission Upgrades shall be calculated based on the sum of the monthly TOD Period Lost Output amounts. Each of the monthly TOD payments relating to Lost Output for West of Devers Transmission Upgrades shall be calculated pursuant to the following formula, where “n” is the TOD Period being calculated:

TOD PERIOD_n PAYMENT FOR LOST OUTPUT RELATED TO WEST OF DEVERS TRANSMISSION UPGRADES =

$$[A \times B \times C \times D \times E]$$

Where A = Energy Price specified in Special Condition E in \$/kWh (i.e., \$/MWh/1000).

B = Energy Payment Allocation Factor for the TOD Period being calculated.

C = The sum of Lost Output attributable to the West of Devers Transmission Upgrades in all hours for the TOD Period being calculated as set forth in Exhibit L in kWh.

D = GMM or TMM, if applicable.

E = TLF.

SCE’s payments for Lost Output relating to West of Devers Transmission Upgrades shall be included in the next regular monthly payment to Seller after SCE’s acceptance or a final Arbitration determination, as applicable, of Seller’s claim of Lost Output relating to West of Devers Transmission Upgrades.

SCE’s payments for Lost Output relating to West of Devers Transmission Upgrades shall be subject to adjustment at the end of each Term Year to reflect a recalculation of Lost Output based upon Seller’s final estimate of Lost Output for the Term Year in accordance with the procedures set forth in Exhibit L. The adjustment (i.e., an additional payment by SCE or a reduction in Seller’s payment) shall be included in the second regular monthly payment to be made to Seller after the conclusion of the Term Year.

4.03 Payment Statement and Payment.

- (a) SCE shall mail to Seller no later than thirty (30) days after the end of each calendar month during the Term each of the following:

- (i) A statement showing:
 - (1) The Scheduled Amounts for each TOD Period during the monthly period for which the payment is being made;
 - (2) A calculation of the amount payable to Seller during the monthly period pursuant to Section 4.02(b);
 - (3) A calculation of any payment adjustments pursuant to Section 4.02(c);
 - (4) A calculation of any adjustments pursuant to calculation of any Lost Output related to the West of Devers Transmission Upgrades as provided in Section 4.02(d); and
 - (5) A calculation of the net amount due Seller.
 - (ii) SCE's check in payment of said net amount.
- (b) In the event SCE determines that a calculation of Metered Amounts for any purpose hereunder is incorrect as a result of inaccurate meters or the correction of data by the ISO in OMAR, SCE shall promptly recompute Metered Amounts 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 the 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 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 offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to SCE shall be shown on Seller's monthly statement. At SCE's discretion, SCE may offset any remaining amount owed SCE in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days of receipt of such invoice.
- (c) SCE reserves the right to apply amounts that would otherwise be due to Seller under this Agreement as an offset in payment of:
- (i) Any amounts owing and unpaid by Seller to SCE under this Agreement; or
 - (ii) Any amount owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

Nothing in this Section 4.03 shall limit SCE's rights under applicable tariffs, other agreements or applicable law.

- (d) Except for meter inaccuracies which are provided for in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if within forty-five (45) days of 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 statement, computation and payment, and the 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 statement that is calculated. If Seller identifies an error in SCE's favor and SCE agrees that the identified error occurred, SCE may offset the amount of overpayment caused by the error against amounts otherwise owed to Seller and apply the offset to the next monthly statement that is calculated. In the event that the recomputation results in a net amount still owing to SCE after offsetting any amounts owed to Seller, the next monthly statement shall show a net amount owing to SCE. At SCE's discretion, SCE may offset this net amount owed to SCE in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days of receipt of such invoice. The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Twelve.

4.04 Cooperation with Seller and Scheduling.

SCE, at its own cost and expense, shall cooperate reasonably with Seller to permit it to effectuate its Scheduling obligations hereunder.

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

ARTICLE FIVE. FORCE MAJEURE**5.01 No Default if Performance Failure other than Nonpayment Caused by 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 Party involved in the dispute, 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 Startup Deadline Extension.

If Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, then the Startup Deadline shall be extended on a day-for-day basis for the duration of the Force Majeure.

5.04 Firm Operation Deadline Extension.

If Force Majeure occurs at any time after Initial Operation, but prior to the Firm Operation Deadline of the Initial Phase or any subsequent Expansion, which prevents Seller from demonstrating the applicable Net Contract Capacity as provided in Sections 3.03(c) or 3.03(d), then the applicable Firm Operation Deadline shall be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 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 extends for more than five hundred forty (540) consecutive days, or for more than a total of five hundred forty (540) days in any consecutive seven hundred thirty (730) day period.

*** End of ARTICLE FIVE ***

ARTICLE SIX. EVENTS OF DEFAULT: REMEDIES6.01 Events of Default.

An “Event of Default” shall mean, with respect to a Party (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 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;
- (b) Except for an obligation to make payment when due, 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, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided that*, if such Event of Default 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 Event of Default, so long as such Party promptly commences and diligently pursues such cure;
- (c) A Party fails to make when due any payment (other than amounts disputed in good faith) due and owing under this Agreement and such failure 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 five (5) Business Days following a Notice to cure from the Non-Defaulting Party;
- (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 transferee 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) The failure of Seller to achieve Initial Operation on or before the Startup Deadline or any Startup Deadline extended pursuant to the provisions of Section 3.03(b) or Section 5.03;
- (g) With respect to Seller's Guarantor:
 - (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 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 Agreement 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 and Seller fails, within six (6) Business Days after Notice, to provide either replacement Performance Assurance acceptable to SCE or a Guarantee Agreement from a replacement Guarantor, reasonably acceptable to SCE, meeting the qualifications of Section 8.02(c);
 - (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); or
 - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE.
- (h) If at any time :
 - (i) After the commencement of the Term, Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required by Section 3.06(a); or
 - (ii) If at any time after the Final Configuration Date, Seller has not cured an Event of Default with respect to Section 3.06(a) within thirty (30) days after providing the written Notice in accordance with Section 3.06(b).

- (i) With respect to Seller, excluding periods of Force Majeure, if at any time during the Term, the Metered Amounts plus Lost Output in any consecutive six (6) month period are not at least ten percent (10%) of the Expected Annual Net Energy Production set forth in Special Condition A(v), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for Seller's failure to produce, Schedule and deliver such ten percent (10%);
- (j) If at any time during the Term, Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the Generating Facility, except in the ordinary course of Scheduling where the Scheduled Amounts may exceed the Delivered Amounts in any given hour as permitted by and subject to Section 3.01;
- (k) If at any time during the Term, the Generating Facility consists of an ERR type(s) different than that specified in Special Condition A(iii) of this Agreement; *provided, however,* that an Event of Default shall not have occurred if the Generating Facility fails to qualify as an eligible renewable resource due to a change in the RPS Legislation occurring after the Effective Date;
- (l) If at any time during the Term, either:
 - (i) The Generating Facility fails to qualify as an ERR; or
 - (ii) Any electrical output from the Generating Facility sold or to be sold to SCE hereunder fails to qualify as output from an ERR;

provided, however, that an Event of Default shall not have occurred if the failure to qualify results solely from an amendment or modification of the RPS Legislation occurring after the Effective Date;
- (m) If at any time during the Term, the Metered Amounts in any one hour interval, in kWh/hr, exceed one hundred fifteen percent (115%) of the Net Contract Capacity set forth in Special Condition A(iv) to this Agreement, (an "Event of Excess Deliveries"), without the prior written consent of SCE, and within five (5) 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;
- (n) If at any time during the Term, Seller, without SCE's prior consent in writing, removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or

maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE;

- (o) If Seller fails to declare Initial Operation within ninety (90) days from the date that the Generating Facility Operates in parallel with the applicable Transmission Provider's electric system such failure is not cured within five (5) Business Days after Notice from SCE of such failure; or
- (p) 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 delivery 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 of service.

6.02 Early Termination.

If an Event of Default shall have occurred, and not been cured within the applicable cure period set forth in Section 6.01, there will be no opportunity for cure except as specified in Section 6.01. The Party taking the default (the "Non-Defaulting Party") shall have the right:

- (a) To designate, by Notice, a day, no earlier than twenty (20) calendar days after the Notice is effective, as an "Early Termination Date;"
- (b) To immediately suspend performance under the Agreement; and
- (c) 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.

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 (which shall include the Forward Settlement Amount), plus Costs, less any amounts owed by the Non-Defaulting Party to the Defaulting Party (the "Termination Payment"). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment and the Forward Settlement Amount, together with appropriate supporting documentation.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided.

If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party) then the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

Under no circumstances will the Non-Defaulting Party be required to pay the Defaulting Party for any Gains projected to result to the Non-Defaulting Party after the Early Termination Date (e.g., if the Seller is a Non-Defaulting Party, the Seller will have no duty to account to SCE if Seller is able to re-sell Product at a higher price after a termination of the Agreement, and if SCE is the Non-Defaulting Party, SCE shall have no duty to account to Seller if SCE is able to purchase Product at a lower price after a termination of the Agreement).

The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Twelve.

6.04 Consent to Collateral Assignment.

Subject to the provisions of this Section 6.04, Seller shall have the right to assign this Agreement as collateral for financing or refinancing of the Generating Facility.

In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

- (a) SCE shall give written Notice of the Event of Default to Lender, to the person(s) to be specified in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of any alleged Event of Default by Seller;
- (b) Lender shall have the right, in the case of an Event of Default by Seller under the Agreement, to cure such Event of Default in accordance with the provisions of the Agreement;
- (c) SCE shall have the right to request a report from Seller or Lender regarding the development, implementation or modification of a cure plan by Seller and Lender following an Event of Default by Seller under this Agreement and Seller or Lender must provide such report within three (3) days of any SCE Notice to Seller or Lender containing such a request;

- (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 and in a manner applicable to Seller under the Agreement; *provided that*, such cure period may, in SCE's reasonable judgment and sole discretion, be extended, but in no event more than an additional one hundred eighty (180) days;
- (e) After the Firm Operation Date, Lender shall have the right to consent to any termination of this Agreement, which does not arise from an Event of Default;
- (f) Lender shall receive prior Notice of, and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld;
- (g) Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements if 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);
- (h) In the event 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 satisfactory to SCE in its reasonable discretion; and
- (i) In the event that this Agreement is rejected in Seller's Bankruptcy case or otherwise terminated in connection therewith and if such 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 promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's judgment, materially impact the rights or obligations of SCE under such an agreement.

*** End of ARTICLE SIX ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH HEREIN, THERE IS NO 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.

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, AND SUBJECT TO THE PROVISIONS OF SECTION 10.03 (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.

**** 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, however*, 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) On or before the commencement of the Term, Seller shall post Performance Assurance with SCE. The Performance Assurance Amount due to SCE by Seller shall be as set forth in Special Condition E. The Performance Assurance amount shall be posted to SCE at all times during the Term either in the form of cash or Letter of Credit acceptable to SCE; *provided that*, on the commencement of the Term, if SCE has not either returned the Development Fee to Seller or given Seller Notice, pursuant to Exhibit K, of its determination regarding the disposition of the Development Fee by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Fee held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Fee or any portion thereof pursuant to Section 3.03 or SCE's Notice to Seller pursuant to Exhibit K of its determination regarding the disposition of the Development Fee. SCE, in its sole discretion, may accept a Guaranty Agreement from a Guarantor acceptable to SCE to satisfy the Seller's Performance Assurance obligation in lieu of cash or a Letter of Credit as set forth in Section 8.02(c).

- (b) 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. The 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 twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
 - (3) If a 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;
 - (ii) As one method of providing Performance Assurance, Seller may establish one or more Letters of Credit;
 - (iii) Upon the occurrence of a Letter of Credit Default, Seller agrees to 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 fifth (5th) Business Day after the occurrence thereof if only Section 1.73(a) applies);
 - (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default with respect to the Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Seller for which there exist any unsatisfied payment obligations, then SCE may draw on the entire or 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 may be applied by SCE to any amounts owed to SCE by Seller at the time of the drawing. Seller shall reinstate the Letter of Credit up to the full amount set forth in Special Condition F within five (5) Business Days of any drawing by SCE. Seller shall remain

liable for any failure to provide the required amount of Performance Assurance or for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn; and

- (v) 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.
- (c) If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, it shall be in the form of Exhibit H executed by the Guarantor identified in Special Condition G or other party reasonably acceptable to SCE meeting the Credit Rating requirements for the 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 an acceptable Guarantor, within five (5) Business Days.

8.03 Grant of SCE's First Priority Security Interest in Cash or Cash Equivalent Collateral and Related Remedies.

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

- (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) Exercise its rights of setoff against any and all property of Seller in SCE's possession;

- (c) Draw on any outstanding Letter of Credit issued for its benefit; and
- (d) 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's remaining liable for any amounts owing to SCE after such application), subject to SCE's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.04 Subordinated Security Interests and Mortgage.

- (a) Prior to the commencement of the Term, as security for Seller's performance and any amounts owed by Seller to SCE pursuant to this Agreement, Seller or SCE, as the case may be, shall execute, deliver and record, as appropriate, separate agreements, documents, or instruments under which Seller will provide SCE, in a form reasonably acceptable to SCE, with fully perfected security interest(s), or mortgage liens in the Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or Operate the Generating Facility (collectively the "Security Interests"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of Lender in accordance with the terms of the Security Interests. The Security Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller; *provided that*, it shall be an Event of Default if the ownership interest of the Seller is pledged or assigned, or caused or permitted to be pledged or assigned, as collateral or otherwise to any party other than Lender.
- (b) The Parties shall confirm, define, and perfect the Security Interests by executing, delivering, filing, and recording, at the expense of Seller, the Security Interests. In addition, Seller agrees to execute and file 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 Security Interests. The granting of the Security 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 its term. The Security Interests shall be discharged and released, and SCE shall take any steps reasonably required by Seller 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 Security Interests and any other documents evidencing the Security Interests.

- (c) The Security Interests 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), 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 Step-in Rights.

If an Event of Default occurs and is not cured within the applicable cure period set forth in Section 6.01, SCE shall have the right, but not the obligation, to assume operational control and responsibility for all or any part of the Generating Facility (whether directly or through a designee of SCE) in the place of Seller (and Seller shall exercise commercially reasonable efforts to acknowledge such right of SCE in any agreement providing for the Operation of the Generating Facility) in order to continue Operation of the Generating Facility or complete any necessary repairs, in each case so as to assure uninterrupted availability of electric energy from the Generating Facility (the "Step-In Rights").

SCE shall exercise the Step-in Rights by providing written Notice of such exercise to Seller ("Exercise Notice"). Upon receipt of the Exercise Notice, Seller and SCE shall forthwith negotiate an operations agreement ("Operations Agreement"), consistent in all respects with this Section 8.05 and industry practices and standards, which Operations Agreement shall be executed, delivered and implemented by the Parties no later than thirty (30) days after receipt by Seller of the Exercise Notice. The Operations Agreement shall provide that during any period in which SCE shall be Operating the Generating Facility in connection with the exercise of the Step-In Rights:

- (a) SCE shall, in lieu of making any Energy Payment that would otherwise be due hereunder to Seller during the period, apply the proceeds of such payment(s) to any fuel, maintenance, repairs, insurance and other Operating costs of the Generating Facility (in each case pro-rated for the amount attributable to such period), which payments, when aggregated on a monthly basis, shall be no greater than the Energy Payments that would otherwise be due Seller hereunder for the period, and the Parties shall cooperate with each other and execute and deliver such documents as may be necessary or desirable to accomplish the foregoing; and
- (b) Seller shall not incur any Energy Replacement Damage Amounts. In no event shall SCE's decision to exercise the Step-In Rights under this Section 8.05 be

deemed to be a transfer of title of the Generating Facility or a transfer of Seller's obligations as owner thereof.

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

ARTICLE NINE. GOVERNMENTAL CHARGES9.01 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’s 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 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 install, interconnect 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 any of its Affiliates in the case of Seller) 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. It has not relied upon any promises, representations, statements or information of any kind whatsoever that is not contained in this Agreement in deciding to enter into this Agreement; and
- (h) 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 Warranties.

- (a) Seller warrants 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 represents and warrants that it holds the rights to all Environmental and Capacity Attributes if any, which it is conveying to SCE hereunder.

10.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save 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 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 to the extent resulting from its sole negligence or willful misconduct.
- (b) Each Party releases and shall defend, save 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 10.03(e), 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 10.09, Seller shall, at its own cost, defend, save 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 10.09.

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 10.09.

- (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) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

10.04 Assignment.

Except as provided in Section 6.04, neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed. Any such assignment or delegation made without such written consent shall be null and void.

10.05 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.

10.06 Notices.

All notices, requests, statements or payments shall be made as specified in Exhibit B. 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 by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day, unless a different date for the Notice to go into effect is stated in another section of this Agreement. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. 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.

10.07 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) 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 has assigned a “QFID” number to this Agreement for tracking purposes only, and SCE is not requiring that the Generating Facility be a “qualifying facility” for purposes of state or federal law.

10.08 Confidentiality.

The Non-Disclosure Agreement between the Parties attached hereto as Exhibit I is incorporated herein and the termination date of that agreement is modified such that it will terminate on the later of:

- (a) The termination of that Agreement; or
- (b) One year after the date of termination of this Agreement.

10.09 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 \$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, conditioned or delayed.
- (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.”

10.10 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.

*** *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 negotiations to make the minimum changes to the Agreement necessary to make the Agreement capable of being performed and administered or to minimize 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 the Agreement or to resolve issues relating to changes to the Agreement, then either Party may submit issues pertaining to changes to the Agreement to 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.

Hereinafter, the total net incremental changes in ISO charges to Seller and Seller's Actual Revenue for any Term Year as a direct 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":

- (i) Upon the occurrence of congestion on the transmission system, the allocation of available transmission capacity among generators including Seller, impacting Seller's Scheduled Amounts and congestion charges to Seller resulting thereof; and
- (ii) 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.

The procedure for determining an ISO Change Cost is described in Exhibit M. In the event of an inconsistency between this Section 11.02 and Exhibit M concerning the determination of an ISO Change Cost or ISO Change Cost Payment, Exhibit M shall govern.

(b) ISO Change Cost Payment.

It is the intent of the Parties that Seller shall be reimbursed by SCE by 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 SCE shall be paid by Seller by the amount of the ISO Change Cost above the ISO Change Cost Threshold Amount if the ISO Change Cost has been a saving to Seller (collectively, the “ISO Change Cost Payment”). 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 M. The procedure for addressing disputes related to an ISO Change Cost determination is set forth in Section 11.03 below. In addition, it is the intent of the Parties that SCE be afforded certain rights after a Change in ISO Tariff to mitigate an ISO Change Cost. These mitigation rights, the circumstances in which rights may be exercised and the procedure for exercising such rights are set forth in Section 11.04.

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 (60th) 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 for its claim that a Change In ISO Tariff has occurred, the Party’s calculation supporting its ISO Change Cost Payment claim in accordance with Exhibit M, and annotated workpapers and source data supporting the Party’s calculation.

(b) Payment of Claim.

Within forty-five (45) days from the date Notice of an ISO Change Cost Payment is provided pursuant to this Section 11.03, a Party receiving a claim for an ISO Change Cost Payment shall either:

- (i) Pay the claim; or

(ii) Provide Notice to the claiming Party that it disputes the claim and pay any portion of the claim which it does not dispute. The Party's Notice that it disputes the claim shall set forth in detail the reason for its dispute, and shall include the disputing Party's calculation of the ISO Change Cost and any ISO Change Cost Payment in accordance with Exhibit M as well as annotated workpapers and source data supporting the disputing Party's calculations.

(c) Disputed Claims.

The Parties shall negotiate in good faith to resolve any dispute regarding a claim for the ISO Change Cost Payment and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as they each may possess which is requested by the other Party. Such information may be provided pursuant either to the Non-Disclosure Agreement attached as Exhibit I or to such other agreement that the Parties shall negotiate to provide reasonable protection for their confidential business information or trade secrets.

If the Parties are unable to resolve a dispute regarding a claim for the ISO Change Cost Payment within forty-five (45) days of the sending of Notice by the disputing Party pursuant to this Section 11.03, either Party may submit the dispute to arbitration as provided in Article Twelve.

11.04 SCE's Mitigation Rights.

(a) Mitigation Rights.

After a Change in ISO Tariff, SCE shall have the rights (individually, or in any combination, the "SCE Mitigation Rights"), subject to the limitations set forth below in Section 11.04(b), to:

- (i) Make any decisions regarding Seller's bids into ISO-administered markets in order to:
- (1) Minimize SCE cost exposure to any ISO Change Cost Payment to Seller with respect to this Article 11 and Exhibit M, and, if applicable;
 - (2) Minimize Seller's cost exposure to the Threshold Amount with respect to Article 11 and Exhibit M,

which decision-making right shall become effective upon SCE providing to Seller three (3) Business Days Notice, *provided however*, that it is the intent of the Parties that:

- (3) Any changes in ISO charges or Seller's Actual Revenue, as described in Section 11.02(a), as a result of the exercise of SCE's Mitigation Rights be accounted for in any calculation to be made pursuant to Exhibit M; and
 - (4) Prior to giving the above-described Notice of its intent to exercise decision-making rights, SCE shall make commercially reasonable efforts to consult with Seller regarding an adjustment bidding strategy.
- (ii) If SCE is not satisfied that its bids are being implemented by Seller in a cost effective manner in accordance with SCE's instructions, become Seller's Scheduling Coordinator in replacement of any person or entity providing Scheduling Coordinator services for Seller, which Scheduling Coordinator change shall become effective upon SCE providing to Seller forty-five (45) days Notice.
- (b) Limitations to Exercising Mitigation Rights.

SCE may exercise the SCE Mitigation Rights if, in addition to a Change in ISO Tariff, any of the following occurs:

- (i) SCE makes an ISO Change Cost Payment to Seller for any Term Year in excess of fifty thousand dollars (\$50,000) and the Notice of exercise of SCE's Mitigation Rights pursuant to Section 11.04(a) is provided within one hundred twenty (120) days from the date of such ISO Change Cost Payment; or
 - (ii) If SCE forecasts that it will be required to make an ISO Change Cost Payment to Seller for any Term Year in excess of seventy-five thousand dollars (\$75,000).
- (c) Procedures for Exercising Mitigation Rights.

Any Notice of SCE's exercise of the SCE Mitigation Rights shall set forth the basis for SCE's determination that one or more of the circumstances set forth in Section 11.04(b) has occurred, including SCE's calculation of any actual or forecast ISO Change Cost Payment, along with annotated workpapers and source data supporting SCE's calculation.

If SCE provides Notice that it is exercising the SCE Mitigation Rights to become Seller's Scheduling Coordinator:

- (i) SCE shall reimburse Seller for any cost or liability to Seller up to a maximum amount of twenty five thousand dollars (\$25,000)

associated with the termination of Seller's arrangements with its then-existing Scheduling Coordinator and its transition of its Scheduling Coordinator relationship to SCE; and

- (ii) The Parties shall promptly enter into a Scheduling Coordinator agreement that is acceptable to both Parties containing substantially similar terms and conditions, including without limitation cost of service terms, as those in effect between Seller and its Scheduling Coordinator at the time Notice is given.

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

ARTICLE TWELVE. ARBITRATION

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 which disputes, claims or controversies the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall be submitted for final and binding arbitration under the procedures described in this section. The arbitration shall be initiated by making a written demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") which may be made at any time following the unsuccessful conclusion of informal good faith dispute resolution efforts, including those informal good faith resolution efforts required by Section 3.04(b), Section 3.17(c), Section 11.01, and Section 11.03(c).

The Parties will cooperate with one another in promptly selecting the Arbitrator and shall further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of the initial written demand for binding arbitration. 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.

Upon a Party's written demand for binding arbitration, such dispute, claim or controversy 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 regards to principles of conflicts of laws.

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.*

However, 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 and all direct testimony in the arbitration shall be submitted in the form of affidavits or declarations under penalty of perjury.

In addition, to the extent that the arbitration is conducted in accordance with the California Arbitration Act, the Parties hereby incorporate Section 1283.05 of the California Code of Civil Procedure, except that each side in the arbitration shall be entitled to take a maximum of three depositions.

Each Party shall cooperate in making available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted. Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator, 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.

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

Southern California Edison

Confidential Information

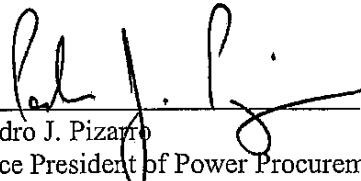
QFID# 1207, Liberty I Biofuels Power LLC

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

LIBERTY I BIOFUELS POWER, LLC
a California limited liability company

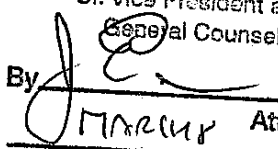
SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation

By: _____
[Name]
[Title]

By: 
Pedro J. Pizarro
Vice President of Power Procurement

Date: _____

Date: 3/8/2005

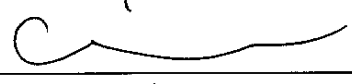
APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By: 
Attorney
2005

The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

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

LIBERTY I BIOFUELS POWER, LLC
a California limited liability company

**SOUTHERN CALIFORNIA EDISON
COMPANY**, a California corporation

By: 
Wilson E. Nolan
Chief Executive Officer

By: _____
Pedro J. Pizarro
Vice President of Power Procurement

Date: 3-7-05

Date: _____

EXHIBIT A**GENERATING FACILITY AND SITE DESCRIPTION****1. GENERATING FACILITY.**

The Generating Facility, with the Expansion, will be a nominal 17.5 MW power plant with Station Use of 2.5 MW, producing 15 MW net. Under normal operating conditions it will be fueled with a mixture of biomass and biosolids.

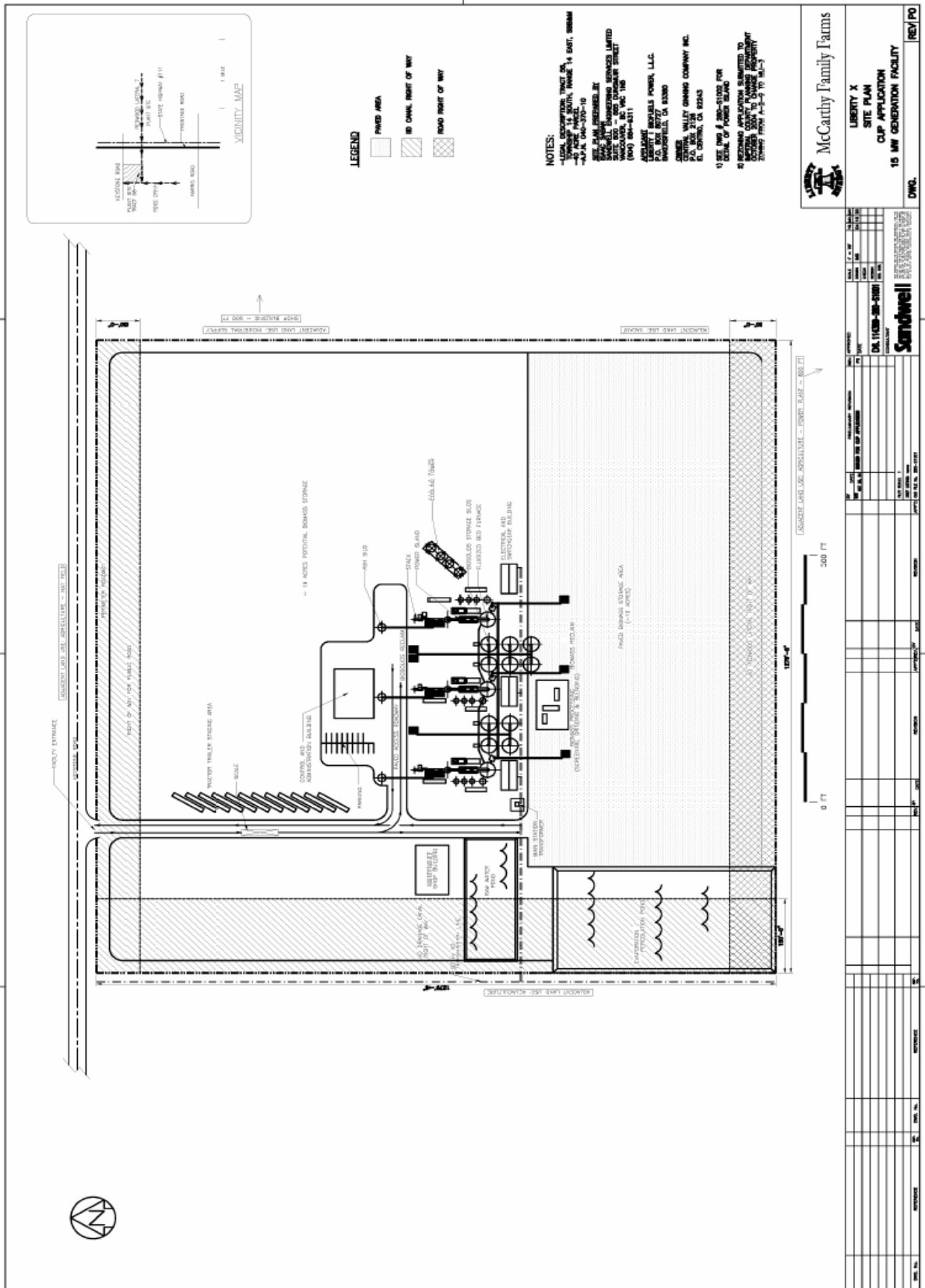
The Generating Facility will consist of three base loaded trains. Each train will produce high pressure steam heat in a bubbling fluidized bed boiler. The steam will be used to drive a condensing steam turbine driven electric generator capable of producing 5.8 MW at 4.16 kV.

The Generating Facility will use Best Available Control Technology to reduce and control air emissions to meet California Air Resource Board (CARB) and Environmental Protection Agency (EPA) requirements. Each train will have dedicated air emissions control equipment that includes a dry scrubber, baghouse, and ash silo. Up to twelve silos will be constructed onsite to store emission control chemicals including limestone, quick lime, calcium chloride, and powdered activate carbon (PAC). Liquefied ammonia, used to control NOx emissions, will be stored in up to three trailers.

Fuel receiving and storage equipment will be common to all trains. Biomass will be stored on the ground in paved areas. Three biomass receiving units will be used to meter fuel to the boilers. Biosolids will be delivered to a dedicated receiving unit (up to three will be constructed) from which biosolids will immediately be conveyed to storage in one of ten silos. Fuel will be sourced within Southern California.

A main station transformer will step-up the 4.16 kV output of the electric generators to the 92 kV level of the transmission line which runs along the west boundary of the Site.

QFID# 1207, Liberty I Biofuels Power LLC



2. **SITE.**

The Site is a 38 acre parcel of vacant level land that is being rezoned as part of a 3000 acre industrial park. The property is supplied with water and power from the Imperial Irrigation District (IID).

The Redwood Lateral canal borders the southern property boundary and will deliver water to the site.

The Rose Drain and a 92kV transmission line run along the western property boundary.

Process water will be discharged to a pond and may eventually be discharged to the Rose Drain.

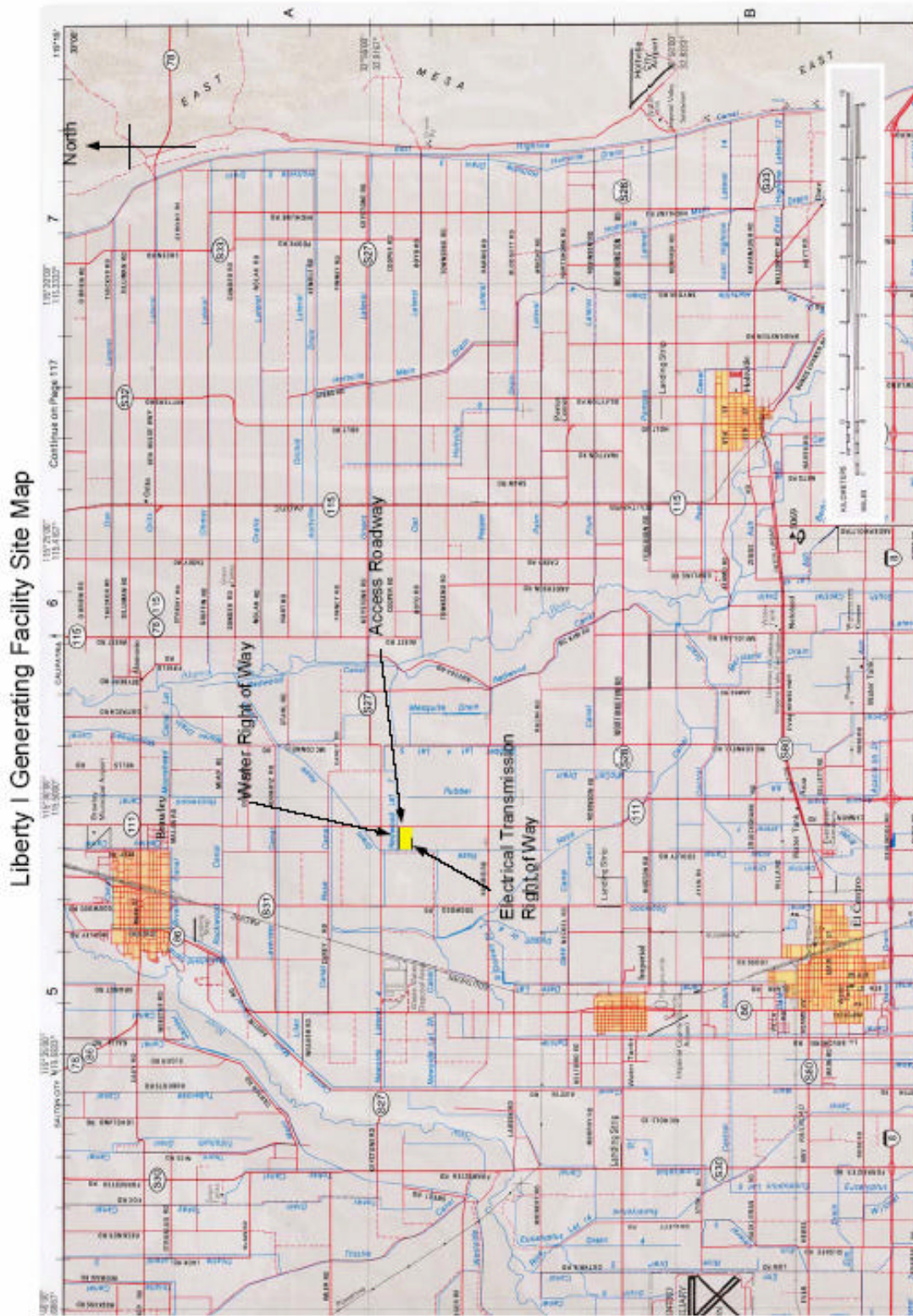
Sanitary flow will be managed onsite with a private treatment system under a permit from the local Health Department.

The site will be accessed by vehicles from Keystone Road approximately ½ mile west of Highway 111.

Site Address.

213 East Keystone Road, El Centro, CA 93219

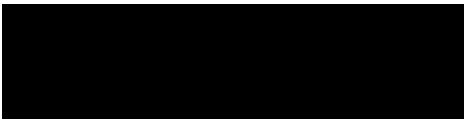
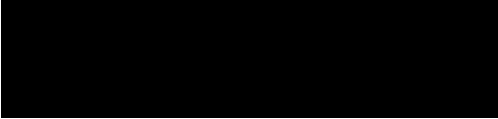
Tract 58, Township 14 South, Range 13 East, SBB&M



The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

EXHIBIT B
NOTICE LIST

<p>Name: LIBERTY I BIOFUELS POWER, LLC ("Seller")</p>	<p>Name: SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>All Notices are deemed provided in accordance with Section 10.06 if made to the address and/or facsimile numbers provided below:</p>	<p>All Notices are deemed provided in accordance with Section 10.06 if made to the address and/or facsimile numbers provided below:</p>
<p>Street: 1601 Skyway Drive City: Bakersfield, California Zip: 93308 Attn: CEO, Liberty Energy Email: WENolan@McCarthyFarms.com</p>	<p>Street: 2244 Walnut Grove Ave., Quad 4-D City: Rosemead, California Zip: 91770 Attn: Kevin Payne Director, QF Resources Email: Kevin.Payne@sce.com</p>
<p>Phone: (661) 391-5840 Facsimile: (775) 367-2731 Duns: To Be Supplied Federal Tax ID Number: 77-0268655</p>	<p>Phone: (626) 302-1212 Facsimile: (626) 302-1103 Duns: 006900818 Federal Tax ID Number: 95-1240335</p>
<p>Contract Administration: Attn: Wilson Nolan Phone: (661) 391-5840 Facsimile: (775) 367-2731 Email: WENolan@McCarthyFarms.com</p>	<p>Contract Administration: Attn: Susan Kappelman Phone: (626) 302-8586 Facsimile: (626) 302-1103 Email: Susan.Kappelman@SCE.com</p>
<p>Invoices: Attn: Dan Hansen Phone: (661) 391-5840 Facsimile: (661) 391-5840 Email: DHansen@McCarthyFarms.com</p>	<p>Invoices: Attn: Paul Amero Phone: (626) 302-9567 Facsimile: (626) 302-1102 Email: Paul.Amero@SCE.com</p>

<p>Scheduling: Attn: Wilson Nolan Phone: (661) 391-5840 Facsimile: (775) 367-2731 Email: WENolan@McCarthyFarms.com</p>	<p>Day Ahead Scheduling: Attn: Manager of Day-Ahead Operations Phone: (626) 302-3308 Facsimile: (626) 307-4416 Email: Thomas.Watson@SCE.com</p> <p>Real Time Scheduling: Attn: Manager of Real Time Operations Phone: (626) 302-3229 Facsimile: (626) 307-4416 Email: John.Pespisa@SCE.com</p>
<p>Payments: Attn: Dan Hansen Phone: (661) 391-5840 Facsimile: (661) 391-5840 Email: DHansen@McCarthyFarms.com</p>	<p>Payments: Attn: Cindy Shindle Phone: (626) 302-9272 Facsimile: (626) 302-1102 Email: Cindy.Shindle@SCE.com</p>
<p>Wire Transfer: </p>	<p>Wire Transfer: </p>
<p>Credit and Collections: Attn: Dan Hansen Phone: (661) 391-5840 Facsimile: (661) 391-5840 Email: DHansen@McCarthyFarms.com</p>	<p>Manager of Credit and Collateral: Attn: Manager of Finance Phone: (626) 302-1129 Facsimile: (626) 302-2517 Email: Michael.Carter@SCE.com</p>
<p>With additional Notices of an Event of Default or Potential Event of Default to: Attn: General Counsel Phone: (213) 892-4200 Facsimile: (213) 892-4717 Email: EFeo@Milbank.com</p>	<p>With additional Notices of an Event of Default or Potential Event of Default to: Attn: General Counsel Phone: (626) 302-1903 Facsimile: (626) 302-2970 Email:</p>

<p>Lender: Attn: To Be Determined Phone: Facsimile: Email:</p>	<p>Generation Operations Center: Phone: (626) 302-3285 or Phone: (626) 302-3205</p>
<p>Guarantor: Attn: As of the Effective Date, not applicable. Phone: Facsimile: Email:</p>	<p>IVR Scheduling: Phone: (626) 302-1145</p>

EXHIBIT C**SCHEDULING REQUIREMENTS AND PROCEDURES****1. Introduction.**

The Parties shall abide by the Scheduling requirements and procedures described below and shall make 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 schedule and outage submissions.

2. Procedures.

- (a) Introduction.

In general, Generating Facilities must meet all of the following requirements before Scheduling with SCE.

- (b) Information Exchange.

Seller shall provide to SCE information regarding Seller's Scheduling Coordinator ("SC") at least thirty (30) days before the expected commencement of the Term, or any change in Seller's SC. This information shall include the:

- (i) SC's name.
- (ii) SC's SCID as assigned by the ISO (e.g., SCE's ID is "SCE1").

Seller's SC and SCE shall then exchange their appropriate contact information including: names of authorized scheduling personnel, phone number, FAX numbers and e-mail addresses.

- (c) Notification of Schedule Estimates.

Seller shall provide SCE an electronic file containing a non-binding rolling thirty (30) day estimate of hourly Schedules for the Generating Facility, beginning at least thirty (30) days prior to Initial Operation. These files shall:

- (i) Be constructed using reasonable file formats, templates, and naming conventions agreed to by the Parties.
 - (ii) Include Seller's contact information.
 - (iii) Be sent to "esmstpoutage@sce.com" with a copy to "presched@sce.com" or as otherwise instructed by SCE.
 - (iv) Be updated by close of business each Wednesday.
 - (v) Limit hour-to-hour Schedule changes to no less than one (1) MW.
- (d) SC-to-SC Trade Procedures.

Scheduling between the Parties will be via Scheduling Coordinator Trades ("SC-to-SC Trades"), as specified below:

- (i) Unless otherwise agreed, SCE requires telephonic notification of all Day-Ahead and Hour-Ahead schedules, followed by written electronic confirmation (e-mail preferred, FAX accepted).
- (ii) Day-Ahead Schedules shall be communicated to SCE's Day-Ahead Group no later than 8:30 a.m. the day prior to the effective date of the Schedule. Seller must simultaneously inform its Scheduling Coordinator and SCE of Day-Ahead Schedule changes.
- (iii) Hour-Ahead schedules shall be communicated to SCE's Real-Time Group no later than ½ hour prior to the ISO's Hour-Ahead scheduling deadline.
- (iv) The SC-to-SC Trade quantity must match the Generating Facility Schedule.

3. 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.

EXHIBIT D**PAYMENT ADJUSTMENTS FOR SCHEDULING DEVIATIONS BY SELLER**

In accordance with the provisions of Section 4.02(c), if in any Settlement Interval, a Generating Facility's Scheduled Amounts deviate from the Generating Facility's Delivered Amounts by more than plus or minus three percent ($\pm 3\%$) of the Generating Facility's Delivered Amounts, then Seller shall be subject to a payment adjustment calculated by SCE in accordance with the procedures and formulae set forth below.

(1) UNDER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval;

- (a) The Scheduled Amount is less than ninety-seven percent (97%) of the Delivered Amount, and
- (b) The Market Price is greater than the time-differentiated Energy Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Delivered Amount in the Settlement Interval being calculated.
- B = The Scheduled Amount in the Settlement Interval being calculated.
- C = Energy Price specified in Special Condition E to this Agreement in \$/kWh (i.e., \$/MWh/1000) payable during the Settlement Interval being calculated.
- D = Market Price for the Settlement Interval being calculated in \$/kWh.
- E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is less than the Delivered Amount if, during such Settlement Interval, the Market Price is equal to or less than the time-differentiated Energy Price payable during the Settlement Interval.

(2) OVER-SCHEDULING ADJUSTMENT.

If during any Settlement Interval;

- (a) The Scheduled Amount is greater than one hundred three percent (103%) of the Delivered Amount, and
- (b) The Market Price is less than the time-differentiated Energy Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

Where A = The Delivered Amount in the Settlement Interval being calculated.

B = The Scheduled Amount in the Settlement Interval being calculated.

C = Energy Price specified in Special Condition E to this Agreement in \$/kWh (i.e., \$/MWh/1000) payable during the Settlement Interval being calculated

D = Market Price for the Settlement Interval being calculated in \$/kWh.

E = Energy Payment Allocation Factor applicable to the Settlement Interval being calculated.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the Delivered Amount if, during such Settlement Interval, the Market Price is greater than or equal to the time-differentiated Energy Price payable during the Settlement Interval.

EXHIBIT E**ENERGY REPLACEMENT DAMAGE AMOUNT**

In accordance with the provisions of Section 3.04, if in any Term Year Seller fails to meet Seller's Annual 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 Annual Energy Delivery Obligation in kWh.

B = Sum of Metered Amounts over the Term Year in kWh.

C = Sum of Lost Output over the Term Year in kWh.

D = Simple average of the Market Price for all Settlement Intervals in the Term Year 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.

EXHIBIT F

SELLER’S MILESTONE SCHEDULE

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	2-10-05	Submits interconnection application.
2	1-31-06	Files a Conditional Use Permit application.
3	1-31-06	Files an Authority to Construction permit application.
4	6-30-05	Files a CEC Certification and Verification application.
5	4-30-05	Receives a completed System Impact Study.
6	12-31-05	Receives a completed Facility Study.
7	3-31-06	Executes a Transmission Owner Tariff or applicable service agreement.
8	3-31-06	Obtains control of all Site lands and necessary rights-of-way.
9	6-30-06	Executes an Engineering, Procurement and Construction (EPC) contract.
10	6-30-06	Receives a Conditional Use Permit.
11	6-30-06	Receives an Authority to Construct permit.
12	12-31-05	Receives CEC Certification and Verification.
13	3-31-06	Completes financing.
14	10-15-06	Begins construction of the Generating Facility.
15	7-31-07	Receive the electric generator at the Generating Facility.
16	9-30-07	Begins startup activities.
17	12-31-07	Achieves Initial Operation.
18	12-31-08	Demonstrates the Net Contract Capacity.

EXHIBIT G**MILESTONE PROGRESS REPORTING FORM**

Seller shall prepare a written report each month on its progress relative to the development construction and startup of the Generating Facility and the Milestone Schedule for the Initial Phase and any Expansion. 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 B, on the fifth (5th) 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 Sellers receipt, or forfeiture of its Development Fee.

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. Description of any planned changes to the Generating Facility and Site Description in Exhibit A.
5. Bar chart schedule showing progress on achieving the Milestone Schedule.
6. PERT or GANT chart showing critical path schedule of major items and activities.
7. Summary of activities during the previous month.
8. Forecast of activities scheduled for the current month.
9. Written description about the progress relative to Seller's Milestone Schedule.
10. List of issues that could potentially impact Seller's Milestone Schedule.
11. Enumeration and schedule of any support or actions requested of SCE.
12. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Generating Facility performance including performance projections for the next twelve (12) months.

EXHIBIT H
FORM OF GUARANTY AGREEMENT

1. Guaranty.

For valuable consideration, [Guarantor's legal name], [legal status] ("Guarantor") unconditionally 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"). Upon the failure or refusal by Principal to pay any amounts owed to Beneficiary by Principal under the Agreement (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.

The liability of Guarantor hereunder shall not exceed at any one time the sum of [dollar amount] in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder, to be paid to Beneficiary, its successors and assigns, and Guarantor hereby binds itself, its heirs, executors, administrators, successors and assigns, jointly and severally. 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.

3. Independent Liability.

The obligations of Guarantor hereunder are independent of the obligations of Principal. The liability of Guarantor hereunder is independent of any other guaranty of payment received by Beneficiary in connection with the Agreement and is not affected or impaired by any dissolution, reorganization, or insolvency of Principal, or any payment to Beneficiary by Principal that Beneficiary subsequently returns to Principal pursuant to court order in any bankruptcy or other debtor-relief proceeding, or any indemnity agreement Principal may have from any party.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous unless terminated in accordance with the following requirements. This Guaranty may be terminated with regard to future transactions; *provided that*, Guarantor must provide 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 Section 4(a) hereof, this Guaranty shall be reinstated if at any time following the termination of this Guaranty under Section 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 Sections 4(a) hereof.

5. Subrogation.

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 waives any rights 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 which the Beneficiary now has or

acquires, until all of the Obligations shall have been irrevocably paid to the Beneficiary in full. If (a) the Guarantor shall have performed and made payment to the Beneficiary of all or any part of the Obligations and (b) all the Obligations shall have been irrevocably paid in full, the Beneficiary shall, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Obligations resulting from such payment by the Guarantor.

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.

6. Waivers of Notices and Defenses by 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) 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 agreement, except to the extent the amount(s) owed to Beneficiary by Principal have been paid.
- (d) Guarantor waives all rights and defenses arising out of an election of remedies by Beneficiary, even though that election of remedies may impair or destroy Guarantor's rights of subrogation and reimbursement against Principal by operation of Section 580d of the California Code of Civil Procedure or otherwise.

- (e) Until all amounts owed by Principal to Beneficiary are paid in full, Guarantor shall have no right of subrogation, waives any right to enforce any remedy that Beneficiary has or may have against Principal, and waives any benefit or and any right to participation in any security from Principal now or later held by Guarantor.
 - (f) 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.
7. 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.

8. 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.

9. 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 Guarantee does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any governmental authority; and
- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

10. 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.

11. 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.

12. 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.

13. 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.

14. Notice.

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: Director, QF Resources
Phone: (626) 302-1212
Facsimile: (626) 302-1102

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.

Guarantor.

 [legal name]

By: _____
Title: _____
Date: _____

Beneficiary.

Agreed to by Beneficiary for purposes of establishing the creditworthiness of Principal, as partial security for the Agreement.

SOUTHERN CALIFORNIA EDISON COMPANY

By: _____
Title: _____
Date: _____

EXHIBIT I
NON-DISCLOSURE AGREEMENT

"CONFIDENTIAL INFORMATION.
THE CONTENTS OF THIS DOCUMENT ARE SUBJECT TO
A CONFIDENTIALITY AGREEMENT"



NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

Liberty I Biofuels Power, L.L.C.

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and **Liberty I Biofuels Power, L.L.C. ("Liberty I")**, a Limited Liability Corporation, hereby enter into this Non-Disclosure Agreement ("Agreement"). SCE and Liberty I 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 August 28, 2003, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. Liberty I desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Liberty I to SCE as part of Liberty I's submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to Liberty I as part of discussions or negotiations with Liberty I concerning Liberty I's Proposal.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. 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.

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2. 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 its employees, directors, financial advisors, attorneys or accountants who have a strict need to know solely for the purpose of assisting in evaluating the Proposals, or in subsequent discussions or negotiations regarding the Proposal and who read and agree to abide by this Agreement ("Permitted Disclosee").
3. 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 68-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:
 - a. Information which is in the public domain as of the Effective Date of this Agreement or which later comes into the public domain from a source other than from the other Party or its Permitted Disclosee;
 - b. Information which SCE or Liberty I can demonstrate in writing was already known to SCE or Liberty I prior to the effective date of this Agreement;
 - c. Information which comes to SCE or Liberty I from a *bona fide* third party source not under an obligation of confidentiality;
 - d. Information which is independently developed by SCE or Liberty I without use of or reference to Confidential Information or information containing Confidential Information; or
 - e. The fact that Liberty I submitted a Proposal in response to the RFP and/or is declared a willing bidder pursuant to the RFP.
5. *There is no section 5 in this Non-disclosure document.*

"CONFIDENTIAL INFORMATION.
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6. Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

**"CONFIDENTIAL INFORMATION.
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7. Parties agrees 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 Liberty I 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.
8. 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.
9. Any notice or communication given pursuant to this Agreement shall be in writing and (i) delivered personally, in which case delivery is given upon written acknowledgment of receipt; (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: Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Telephone: (626) 302-1823
Facsimile: (626) 302-1103
Attention: Director, QF Resources

If to Liberty I: Liberty I Biofuels Power, LLC
1443 West Main Street
El Centro, CA 92243
Telephone: (760) 353-8500
Facsimile: (775) 719-4256
Attention: Wilson Nolan, CEO

With Copy To:

McCarthy Family Farms, Inc.
1601 Skyway Drive, Suite 205
Bakersfield, CA 93380
Telephone: (661) 391-5840
Facsimile: (661) 391-5844
Attention: Pat McCarthy

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- 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 Parties.
- 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.
- 18. This Agreement may be signed in counterparts, each of which shall be deemed an original.

SOUTHERN CALIFORNIA EDISON COMPANY,
a California corporation
2244 Walnut Grove Avenue
Rosemead, CA 91770

Liberty I Biofuels Power, L.L.C.,
a Limited Liability Corporation
1443 West Main Street
El Centro, CA 92243

By:
Name: Lars E. Bergmann
Title: Director, OF Resources
Date: September 23, 2003

By:
Name: Wilson E. Nolan
Title: Chief Executive Officer
Date: September 23, 2003

EXHIBIT J
TIME OF DELIVERY PERIODS AND
ENERGY PAYMENT ALLOCATION FACTORS

<u>Time of Delivery Periods (“TOD Periods”)</u>			
<i>TOD Period</i>	<i>Summer Jun 1st – Sep 30th</i>	<i>Winter Oct 1st – May 31st</i>	<i>Applicable Days</i>
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.
	6:00 p m. – 11:00 p m.		Weekdays except Holidays.
Off-Peak	11:00 p m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		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 & Holidays.

<u>Energy Payment Allocation Factors</u>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Energy Payment Allocation Factor</i>
Summer	On-Peak	Fixed Value.	1.4251
	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
Winter	Mid-Peak	Fixed Value.	1.2185
	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

“Holiday” is defined as either New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans’ Day, Thanksgiving Day, or 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.

EXHIBIT K**PROCEDURE FOR PARTIAL OR FULL RETURN
OF DEVELOPMENT FEE****1. Seller's Request for Development Fee Refund.**

Seller shall provide Notice to SCE of its request for Development Fee refund based upon either of the following:

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), 2.04(c) or Section 5.05 as set forth in Section 3.03(c)(ii); or
- (b) The date and hour selected by Seller, on or before any applicable Firm Operation Deadline, during which Seller claims it has demonstrated the applicable Net Contract Capacity ("Demonstration Hour").

2. Full Return of Development Fee for Termination of Agreement.

Provided that SCE does not dispute Seller's Notice of request for Development Fee refund pursuant to Item 1(a) above, SCE shall return the Development Fee 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. Full or Partial Return of Development Fee for Demonstrating 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 Development Fee 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;
- (b) Complete a site visit to verify the Generating Facility and any applicable Expansion was developed in accordance with the Generating Facility and Site Description and any applicable Expansion set forth in Exhibit A and to determine the Demonstrated Net Contract Capacity based on the Generating Facility Capacity.
- (c) Based upon the information in Item 3(a), calculate the amount of Development Fee refund due Seller pursuant to Sections 3.03(c) and 3.03(d).

- (d) Provide Notice to Seller of the amount of Development Fee being returned pursuant to Item 3(d) and the amount of Development Fee forfeited, as applicable.
- (e) Return any Development Fee due Seller if such Development Fee was posted in the form of cash.
- (f) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Fee is due Seller. If Seller is only entitled to a partial return of the Development Fee SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Fee forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.
- (g) In the event SCE has determined that Seller is entitled to less than a complete return of the Development Fee, provide Seller a Notice setting the amount of the Development Fee to be forfeited by Seller and its explanation of the reason(s) that a forfeiture of all or part of the Development Fee is appropriate.

EXHIBIT L**SELLER'S ESTIMATE OF LOST OUTPUT**

Lost Output, as used in Section 3.16 shall be estimated by Seller in accordance with the procedures described in this Exhibit L. 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 Term Years. Seller shall update the Workbook each month and shall include the latest revision of the Workbook with its monthly report of Lost Output.

1. Log of Lost Output Events.

The Log shall be kept on a single Worksheet in the Workbook. It shall identify the date, time, duration, cause and percentage by which the Generating Facility's output was curtailed for each Lost Output event.

2. Data Collection.

Seller shall record all hourly Metered Amounts, during the Term, in the Workbook on a single worksheet labeled "Metered Amounts." The worksheet shall be arranged with one column for the date, one column for the time, one column for the weekday, one column for the recorded Metered Amounts for each Term Year and one 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 congestion, a scheduled outage, a forced outage, a Forced Majeure or West of Devers Transmission Upgrades.

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. All hours during

which the Generating Facility's Scheduled Amounts were curtailed due to congestion, a scheduled outage, a forced outage, or Forced Majeure shall be excluded from the averaging calculations.

If a Monthly Profile is incomplete because of missing hourly averages or if more than one half 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 column for the weekday, one column for the time, one column for each Term Year Monthly Profile and 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. The worksheet shall include one column for the date, one column for the time, one column for the weekday, one column for Seller's Lost Output estimate for each Term Year and one row for each one (1) hour period during the Term Year. The worksheet shall be labeled "LO Years."

Seller's estimate of Lost Output, for any hour during which the Generating Facility was not offline due to a scheduled outage or a forced outage 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 worksheet that has one column for the month, one column for each Term Year and one 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.

EXHIBIT M

ISO CHANGE COST PAYMENT CALCULATION

1. Introduction.

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

$$\begin{aligned}
 \text{ISO CHANGE COST} = & \sum_{\text{TermYearHour}\#1}^{\text{TermYearHourLast}} [A_{\text{before}} + B_{\text{after}} + C_{\text{after}}] - \\
 & \sum_{\text{TermYearHour}\#1}^{\text{TermYearHourLast}} [A_{\text{after}} + B_{\text{before}} + C_{\text{before}}]
 \end{aligned}$$

Where:

- (a) As used herein, “Seller’s Actual Revenue” means the total of payments received by Seller during the Term Year pursuant to Article Four, excluding any payment adjustments pursuant to Section 4.02(c).
- (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_{before} , A_{after} , B_{before} , B_{after} , C_{before} and C_{after} are described as follows:

(a) Changes in ISO Allocation of Transmission Congestion and ISO Transmission Loss Methodologies Impacting Scheduled.

A_{before} = 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 directly result from applying the ISO's methodology and procedures in effect *immediately prior* to any Change in ISO Tariff for allocating transmission capacity; 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 using the ISO's methodology and procedures *as of the Effective Date* for Seller self-providing all ISO-assessed transmission losses in Seller's Scheduled Amounts by applying the GMM, or TMM (using the average values of GMM or TMM for the twelve (12) calendar months *immediately prior* to any Change in ISO Tariff), to the Metered Amounts.

Nothing in the preceding paragraph shall be interpreted as a restriction on Seller's ability to self-provide or not self-provide for ISO assessed transmission losses.

A_{after} = 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), unless the Generating Facility is located outside of ISO Zone SP-15 in which case B_{before} shall be the calculated amount of ISO charges, if any, that would have been paid by Seller during the Term Year directly relating to congestion for delivery of Product from the Generating Facility to the Delivery Point using the ISO's methodology, procedures and historical data that would have applied in the twelve (12) calendar months *immediately prior* to any Change in ISO Tariff.

B_{after} = Actual amount of ISO charges paid by Seller during the Term Year directly 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_{after} = Actual amount of ISO charges paid by Seller during the Term Year directly relating to transmission losses for delivery of Product from the Generating Facility to the Delivery Point.

3. Change Cost Payments.(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:

$$\text{ISO CHANGE COST PAYMENT TO SELLER} = E - F$$

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount.

(b) Change Cost Payment to Seller.

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:

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

Where:

E = ISO Change Cost as calculated above.

F = ISO Change Cost Threshold Amount.

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, Room 490
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 (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m, California time, on the Expiration Date (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; *provided, however*, that this Letter of Credit will be automatically extended without amendment for successive one (1) year periods from the present or any future expiration date hereof, unless the Bank provides the Beneficiary with written notice of its election not to renew this Letter of Credit (a "Notice of Non-renewal") at least sixty (60) days prior to any such expiration date (the present or any future expiration date as aforesaid is referred to herein as the "Expiration Date"). 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 the Beneficiary by presentation in strict 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; 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 Bank

By:

Title: _____

ATTACHMENT A TO EXHIBIT N

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

(Sample Text)

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 -]A. A Letter of Credit Default has occurred under the Renewable Power Purchase and Sale Agreement (the "Agreement") between Beneficiary and Applicant.
 -]B. An Event of Default (as defined in the Agreement) with respect to the Applicant has occurred and is continuing.
 -]C. 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.

The contents of this document are subject to a Non-Disclosure Agreement and shall not be disclosed.

- []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 Development Fee as a result of Applicant’s failure to achieve Initial Operation of the *full* Net Contract Capacity by the Startup Deadline or any extended Startup Deadline.
 - []G. The Beneficiary is entitled to retain a portion of the Development Fee equal to the product of \$20 per kilowatt times the Unincluded Capacity in kilowatts as a result of Applicant demonstrating only a portion of the 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.

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

EXHIBIT O**DESCRIPTION OF WEST OF DEVERS TRANSMISSION UPGRADES**

The “West of Devers Transmission Upgrades” includes rebuilding and reconductoring four (4) 230 kV lines west of SCE’s Devers Substation located in Palm Springs. The 230 kV system west of Devers, existing as of the Effective Date, includes two (2) 230 kV circuits connecting the Devers and Vista substations (Devers-Vista No. 1 and No. 2 230 kV lines) and two (2) 230 kV circuits connecting the Devers Substation with the San Bernardino Substation (Devers-San Bernardino No. 1 and No. 2 230 kV lines). The junction of the Devers-Vista right-of-way and the Devers-San Bernardino right-of-way is called the San Bernardino Junction and is approximately three (3) miles south of San Bernardino Substation.

As of the Effective Date, the four (4) 230 kV lines west of Devers are built on three (3) sets of structures (one(1) set of double-circuit towers and two sets of single-circuit towers). The proposed improvements would be constructed within SCE’s existing right-of-way and would include:

1. Removal of the existing forty (40) mile single-circuit 230 kV line between the Devers Substation and the San Bernardino Junction.
2. Removal of the existing forty (40) mile single-circuit lattice steel 230 kV line between the Devers Substation and the San Bernardino Junction.
3. Construction of a new forty (40) mile double-circuit 230 kV line between the Devers Substation and the San Bernardino Junction on existing right-of-way.
4. Reconductoring and modifying the existing double-circuit 230 kV tower line between the Devers Substation and the San Bernardino Junction (three (3) miles), and between the Vista Substation and the San Bernardino Junction (five (5) miles). A number of existing towers may require raising and/or reinforcement. Additional structures may be inter-set between existing structures at some locations.

As of the Effective Date, SCE’s tentative plan, which is subject to modification, is to commence construction of the West of Devers Transmission Upgrades in February 2007 and to complete construction in March 2009.

End