



SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

ORNI 18, LLC

(RAP ID #3108)

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RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

**ORNI 18, LLC
(RAP ID #3108)**

PREAMBLE

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: June 29, 2007 (“Effective Date”).

This Agreement is entered into between:

- (i) **Southern California Edison Company** (“SCE”), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **ORNI 18, LLC** (“Seller”), a Delaware limited liability company, whose principal place of business is at 6225 Neil Road, Reno, Nevada 89511.

SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as “Parties.” Capitalized terms in this Agreement shall have the meanings set forth in Exhibit A.

RECITALS

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, net of Permitted On-Site Loads, as specified herein together with all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE; and

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

The contents of this document are subject to restrictions on disclosure as set forth herein.

ARTICLE ONE. SPECIAL CONDITIONS**1.01 Generating Facility.**

- (a) Name: Brawley I.
- (b) Generating Facility and Location of Site: North Brawley, Imperial Valley, California, as further described in Exhibit B. Seller may add additional properties to the Site from time to time in its reasonable discretion and the Parties shall amend Exhibit B accordingly.
- (c) Eligible Renewable Energy Resource Type: Geothermal.
- (d) Contract Capacity: 50 MW.

The Contract Capacity may be increased as set forth below or reduced as set forth in Section 3.04(e).

Seller may, by giving Notice to SCE within one (1) year of the Effective Date, elect in its sole discretion to increase the Contract Capacity by an additional 50 MW. Seller may increase the Contract Capacity by more than an additional 50 MW pursuant to a written agreement with SCE. Within five (5) Business Days of any such Notice, Seller shall increase the Development Security by \$20 per kW for each kW increase in the Contract Capacity.

Seller may, at any time after Initial Operation, add generating capacity at the Site; provided that, at least ninety (90) days prior to any such addition Seller shall offer (by written Notice to SCE) to sell all Energy, Capacity Attributes, Green Attributes and Resource Adequacy Benefits associated with such additional capacity to SCE under the terms of this Agreement. If SCE rejects Seller's offer, or fails to accept such offer in writing (subject to CPUC approval), within thirty (30) days of Seller's Notice, Seller shall be free to sell such output to one or more third parties; provided that Seller shall ensure to SCE's reasonable satisfaction that such additional capacity is separately metered from the Generating Facility and is separately interconnected to the Transmission Provider. If SCE timely accepts Seller's offer, the Parties shall amend this Agreement accordingly and SCE shall submit such amendment for CPUC approval within forty-five (45) days of such amendment. If the CPUC fails to approve such amendment within six (6) months of its submission for approval by SCE, the amendment shall terminate and Seller shall be free to sell the additional capacity (and associated products) to third parties.

(e) Expected Annual Net Energy Production.

The Expected Annual Net Energy Production for each Term Year shall be the value calculated in accordance with the following formula:

EXPECTED ANNUAL NET ENERGY PRODUCTION, in kWh = A x B x C

Where:

A = Contract Capacity in kW;

B = 95% capacity factor; and

C = 8,760 hours per year;

provided that, in each Term Year commencing with the third Term Year the Expected Annual Net Energy Production shall be adjusted by the Resource Decline Factor.

1.02 Startup Deadline.

The Startup Deadline shall be December 31, 2009, or such other date as provided in this Agreement or as may be agreed to in a writing signed by both Parties. The Startup Deadline shall be extended on a day-for-day basis for any delay caused by Force Majeure, any failure to meet the requirements of Sections 2.03(b) (iv), (vi) or (x) if caused by the act or omission of SCE, or any delay in enactment of the Federal Production Tax Credit Legislation beyond January 1, 2009, *provided* that in no event shall the Startup Deadline be later than December 31, 2010.

1.03 Firm Operation Date.

The Firm Operation Date shall be the date that is six (6) months after Initial Operation, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties.

1.04 Term.

The term of this Agreement (“Term”) shall commence upon Initial Operation as set forth in Section 2.03(a) and shall end on the last day of the calendar month which is two hundred forty (240) months (20 years) from the month of the Firm Operation Date.

1.05 Energy Price.

The Energy Price shall be equal to eighty-five dollars (\$85) per MWh.

The contents of this document are subject to restrictions on disclosure as set forth herein.

1.06 Performance Assurance Amount.

Three hundred fifty-four thousand dollars (\$354,000) per MW of Contract Capacity.

1.07 Seller's Guarantor.

- (a) Guarantor: An entity that may become a party to a Guaranty Agreement in accordance with Section 8.02(a).
- (b) Guaranty Amount: Equal to the Performance Assurance Amount.
- (c) Cross Default Amount: Three percent (3%) of Tangible Net Worth.

1.08 CAISO Change Cost Threshold Amount.

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

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

Where A = Expected Annual Net Energy Production set forth in Section 1.01(e), in kWh.

B = Energy Price specified in Section 1.05, in \$/kWh (i.e., \$/MWh/1000).

C = Two percent (2%).

*** End of ARTICLE ONE ***

ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date.

This Agreement shall become effective on the Effective Date.

2.02 Obligations Prior to Commencement of the Term.

(a) CPUC Filing and Approval of this Agreement.

Within sixty (60) days after 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, as requested by SCE.

SCE shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

(b) Seller's Interconnection Application.

Seller shall exercise diligence in obtaining an interconnection agreement and any transmission, distribution or other service agreement required to transmit electric energy from the Generating Facility to the Delivery Point.

(c) Seller's Regulatory and Governmental Filings.

(i) Within one hundred eighty (180) days after the Effective Date, Seller shall file:

- (1) An application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility, *provided* that Seller shall not be required to file such application or request if: (a) the Generating Facility is ineligible for CEC Certification and Verification as a result of a change in the RPS Legislation, or the rules and regulations relating thereto, after the Effective Date; (b) the Generating Facility would have been eligible for CEC Certification and

The contents of this document are subject to restrictions on disclosure as set forth herein.

Verification under the RPS Legislation, and the rules and regulations relating thereto, in effect as of the Effective Date; and (c) Seller is unable to make such Generating Facility eligible for CEC Certification and Verification through commercially reasonable efforts (which efforts shall not require Seller to incur out-of-pocket costs in excess of \$15,000 in any year); and

- (2) All applications or other appropriate requests with the proper authorities for all other Permits that are reasonably required to be, or are customarily, filed within such period.
- (ii) Seller shall expeditiously seek CEC Certification and Verification (subject to Section 2.02(c)(i)(1)) and all Permits, including promptly responding to any requests for information from the requesting authority.

2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

The Term shall commence upon Initial Operation (as defined below).

(b) Initial Operation.

Initial operation of the Generating Facility (“Initial Operation”) shall be deemed to have been achieved on the date selected by Seller (the “Initial Operation Date”) to begin Forecasting, Scheduling and delivering Product to SCE.

Without limiting Seller’s rights hereunder, the Initial Operation Date may occur any time prior to the Startup Deadline, *provided* that Seller shall provide at least thirty (30) Business Days advance Notice to SCE of the Initial Operation Date. Such advance Notice shall include the information specified in Section 3.15(g) of this Agreement.

The Initial Operation Date shall be no later than sixty (60) days from initial synchronization.

In addition, on or prior to the Initial Operation Date:

- (i) SCE shall have obtained or waived CPUC Approval, as provided herein;

- (ii) Seller shall obtain CEC Certification and Verification; *(provided that this clause (ii) shall not apply to the extent that (a) the Generating Facility is ineligible for CEC Certification and Verification as a result of a change in the RPS Legislation, or the rules and regulations relating thereto, after the Effective Date, (b) the Generating Facility would have been eligible for CEC Certification and Verification under the RPS Legislation, and the rules and regulations relating thereto, in effect as of the Effective Date and (c) Seller is unable to make such Generating Facility eligible for CEC Certification and Verification through commercially reasonable efforts (which efforts shall not require Seller to incur out-of-pocket costs in excess of \$15,000 in any year))*;
- (iii) Seller shall have obtained all Permits required for the construction and Initial Operation of the Generating Facility;
- (iv) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider agreements and such agreements have been approved as required by any applicable Governmental Authorities required for such agreements to be effective;
- (v) Seller shall provide to SCE the Line Loss Factor used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility;
- (vi) The SCE Meter shall be installed at the Generating Facility and shall be operational;
- (vii) Seller shall have furnished to SCE all insurance documents required under Section 10.11(b);
- (viii) Seller shall have posted with SCE the Performance Assurance required under Section 8.02 in the amount set forth in Section 1.06;
- (ix) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider's electric system; and
- (x) Seller shall be Forecasting and Scheduling electric energy to SCE at the Delivery Point.

2.04 Termination Rights of the Parties.

The contents of this document are subject to restrictions on disclosure as set forth herein.

If either Party exercises a termination right, as set forth in Sections 2.04(a), 2.04(b), 2.04(c) or 5.05, neither Party shall be responsible for making a Termination Payment to the other Party and SCE shall be responsible for promptly returning, pursuant to the procedures set forth in Section 3.04(d), the Development Security or Performance Assurance, if any, posted by Seller.

(a) Termination Rights of Both Parties.

Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, in the event CPUC Approval has not been obtained within two hundred seventy (270) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundredth (300th) day after SCE files the request for CPUC Approval.

(b) Termination Rights of Seller.

Seller shall have the right to terminate this Agreement:

- (i) On Notice, which shall be effective five (5) Business Days after such notice is given in the event CEC Certification and Verification and all required Permits have not been obtained by Seller within eighteen (18) months after the Effective Date and a Notice of termination is given on or before the end of the nineteenth month after the Effective Date.
- (ii) On Notice, which shall be effective five (5) Business Days after such Notice is given in the event that Federal Production Tax Credit Legislation is not enacted by January 1, 2010 and a Notice of termination is given on or before February 1, 2010.

(c) Termination Rights of SCE.

SCE shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given on or before the date that is sixty (60) days after Seller provides to SCE the results of any CAISO final Interconnection Study for the Generating Facility if:

- (i) The results of such study reflect the total cost of transmission or distribution upgrades or new transmission or distribution facilities to SCE, or any Transmission Provider under the jurisdiction of the CAISO, that are not paid by Seller (without reimbursement from SCE or any other Transmission Provider) will exceed four million dollars (\$4,000,000); or

- (ii) SCE shall be required to procure transmission service from any transmission provider other than the CAISO to allow SCE to Schedule electric energy and the cost for such transmission service is not reimbursed or paid by Seller.

(d) Uncured Defaults.

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

(e) End of Term.

At the end of the Term as set forth in Section 1.04, this Agreement shall automatically terminate.

2.05 Rights and Obligations Surviving Termination.

(a) Survival of Rights and Obligations Generally.

The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides shall survive any such termination and those that arise from Seller's or SCE's covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time prior to or as a result of the termination of this Agreement, including, without limitation:

- (i) Any obligation of Seller to pay the Energy Replacement Damage Amount under Section 3.05(b);
- (ii) Any obligation to make a Termination Payment under Section 6.03;
- (iii) The indemnity obligations to the extent provided in Section 10.03;
- (iv) The obligation of confidentiality set forth in Section 10.10;
- (v) The right to pursue remedies under Sections 6.02 and 10.16;
- (vi) The right to receive a Termination Payment under Section 6.03;
- (vii) The limitation of damages under Article Seven;
- (viii) The obligation of SCE to make Energy Payments for energy Scheduled to SCE prior to termination under Section 4.02(a);

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- (ix) Any obligation of Seller to make a payment adjustment under Section 4.02(b) arising from Scheduled Amounts provided prior to termination;
 - (x) Any obligation of Seller or SCE to make payments for CAISO Charges as set forth in Section 3.20;
 - (xi) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates' ability to offer, make or agree to third party sales as set forth in Sections 2.05(b) and 3.04(e), if applicable;
 - (xii) The obligation of Seller to post Performance Assurance under Section 8.02; and
 - (xiii) The obligation to make payment adjustments for billing errors under Section 4.03 or as otherwise provided under this Agreement.
- (b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from the Generating Facility after Certain Terminations of this Agreement.

If Seller terminates this Agreement, as provided in Section 2.04(b) (as a result of an inability to obtain required Permits or CEC Certification and Verification) or Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.04(c), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits 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.

This prohibition on contracting and sale shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE (a) on terms and conditions materially similar to the terms and conditions contained in this Agreement; or (b) on terms and conditions no less favorable to Seller than those of its agreement with the third party if Seller is only able to overcome the conditions leading to termination as provided in Section 2.04(b) (as a result of an inability to obtain required Permits or CEC Certification and Verification) or Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party) through a material modification to the Generating Facility (*provided*, however that (i) any terms and conditions in Seller's proposed offer to SCE which materially differ from the terms of this

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Agreement (including any increase in a price over the comparable price term in this Agreement) must be directly related to documented costs that Seller incurred reasonably and in good faith under the circumstances in order to make such material modification to the Generating Facility; and (ii) Seller must provide documentation of such costs and the reasonableness thereof to SCE at the time of the proposed offer to SCE) and, in either case, SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

Seller shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach by Seller of its covenants contained within this Section 2.05(b).

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

ARTICLE THREE. SELLER'S OBLIGATIONS**3.01 Conveyance of Entire Output,
Conveyance of Green Attributes and Capacity Attributes.**

Seller shall use diligent good faith efforts and Prudent Electrical Practices to Schedule and convey the entire Delivered Amounts during the Term to SCE at the Delivery Point and (subject to the provisions of Exhibit E that relate to certain circumstances when Scheduled Amounts exceed Delivered Amounts) to match the Scheduled Amounts and the Delivered Amounts.

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

Seller shall, at its own cost, take all reasonable actions, including executing all documents or instruments necessary to effectuate the use of the Capacity Attributes, Green Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term.

Such actions shall include:

- (a) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
- (b) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes;
- (c) Complying with all current and future CAISO Tariff provisions that address resource adequacy and are applicable to the Generating Facility, including provisions regarding performance obligations and penalties;
- (d) Complying with Applicable Laws regarding the certification and transfer of Renewable Energy Credits; and
- (e) Committing to SCE the full output of the Generating Facility.

SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Capacity Attributes, Green Attributes or Resource Adequacy Benefits to third parties; provided, however, any such action shall not constitute a

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transfer of, or a release of SCE of, its obligations under this Agreement. SCE shall bear all costs associated with any such transfer and, if and to the extent Seller complies in full with its obligations under Sections 3.01 and 3.02 and the representations and warranties under Sections 10.02 (b), (c), (d) and (e), each as applicable to the Product transferred, SCE shall indemnify and hold Seller harmless for any liability to any third party transferee arising from or related to any such transfer.

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

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

From the Effective Date, Seller shall not sell any Product to any entity other than SCE, except that Seller shall have the right to sell electric energy generated by the Generating Facility prior to Initial Operation and any Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to such electric energy generated by the Generating Facility prior to Initial Operation, and to retain all proceeds of such sales.

Notwithstanding anything herein to the contrary, Seller shall not be required to incur out-of-pocket costs in excess of \$20,000 in any year in order to effectuate the use of Environmental Attributes, Capacity Attributes or Resource Adequacy Benefits for SCE's sole benefit throughout the Term. Seller shall not be required to reduce the output of the Generating Facility in order to effectuate the use of the Environmental Attributes, Capacity Attributes or Resource Adequacy Benefits for SCE's sole benefit throughout the term, other than in connection with periodic testing as may be required by CAISO.

3.02 Resource Adequacy Benefits.

Seller grants, pledges, assigns and otherwise commits to SCE the full Contract Capacity in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

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

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits upon, any entity other than SCE; and

- (b) Will not during the Term of this Agreement use, grant, pledge, assign or otherwise commit any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits upon, any entity other than SCE.

3.03 Securing Interconnection and Transmission Agreements, Scheduling and Delivering.

- (a) Seller shall be responsible for obtaining and maintaining any and all Scheduling, interconnection, metering, transmission service rights and Permits required to effect delivery and Scheduling of the electric energy from the Generating Facility to the Delivery Point.
- (b) Seller shall pay all Transmission Provider costs, Scheduling 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 to the Delivery Point.
- (c) Seller shall Schedule or cause to be Scheduled the electric energy generated by the Generating Facility in accordance with the provisions of Exhibit D.

3.04 Development Security.

- (a) Introduction.

Seller shall post and thereafter maintain a development fee ("Development Security") equal to twenty dollars (\$20) for each kilowatt of Contract Capacity specified in Section 1.01(d).

The Development Security shall be held by SCE as security for Seller's meeting the Startup Deadline and installing and demonstrating the Contract Capacity by the applicable Firm Operation Date.

(b) Development Security.

Seller shall post the Development Security in accordance with the terms and conditions set forth in this Section 3.04(b).

- (i) Seller shall post one-half of the Development Security within thirty (30) days following the Effective Date, with the remainder to be posted within thirty (30) days following CPUC Approval. The Development Security shall be held by SCE and shall be in the form of either a cash deposit or a Letter of Credit.
- (ii) Any Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 4.06(a) of this Agreement.
- (iii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.

(c) Forfeiture of Development Security 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 3.04(c) and Section 1.02, in the event that Initial Operation does not occur on or before the Startup Deadline, or does not occur at all (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the Startup Deadline), SCE's sole remedy, subject to Section 2.05(b), Section 10.03 (other than Section 10.03(f)) and Section 10.10, shall be to retain the entire Development Security and terminate this Agreement, and, subject to Section 2.05(b), Section 10.03 (other than Section 10.03(f)) and Section 10.10, neither Party shall have liability under this Agreement after the effective date of such termination.

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 Security per day for each day (or portion thereof) from and

including the Startup Deadline to and excluding the Initial Operation Date (“Daily Delay Liquidated Damages”).

To extend the Startup Deadline, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide SCE with Notice of its election to extend the 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 same 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 in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which 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.

(d) Full Return of Development Security.

The entire Development Security shall be returned to Seller in accordance with the procedure set forth in Exhibit L, in each of the following circumstances:

- (i) Subject to Seller’s achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(c), Seller demonstrates the full Contract Capacity in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date; or
- (ii) If this Agreement is terminated in accordance with Sections 2.04(a), 2.04(b), 2.04(c), or 5.05; *provided that*, a termination under Section 5.05 shall only entitle Seller to a return of the Development Security if the termination is based upon a Force Majeure which prevents Seller from achieving Initial Operation by the Startup Deadline or demonstrating full Contract Capacity by the Firm Operation Date.

The contents of this document are subject to restrictions on disclosure as set forth herein.

(e) Deficient Installation of Contract Capacity;
Partial Forfeiture and Partial Return of the Development Security.

If, on or before the Firm Operation Date, Seller has achieved Initial Operation by the Startup Deadline as provided in Section 3.04(c), but is only able to demonstrate a portion of the Contract Capacity in accordance with the procedure set forth in Exhibit L (the “Demonstrated Contract Capacity”) by the Firm Operation Date, *then* Seller shall only be entitled to a return of the portion of the Development Security equal to the product of twenty dollars (\$20) per kilowatt times the kilowatts of Demonstrated Contract Capacity.

Seller shall forfeit and SCE shall be entitled to retain the balance of the Development Security in accordance with the procedure set forth in Exhibit L.

In addition, the Contract Capacity set forth in Section 1.01(d) shall be reduced to the Demonstrated Contract Capacity as of the Firm Operation Date, the Expected Annual Net Energy Production set forth in Section 1.01(e) shall be calculated using such adjusted Contract Capacity, and neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Contract Capacity (“Unincluded Capacity”);

provided that, neither Seller nor Seller’s Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes or Resource Adequacy Benefits 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 Security pursuant to Exhibit L.

The prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller’s Affiliates provide SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to or no less favorable to SCE than, the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE’s receipt thereof.

3.05 Seller's Energy Delivery Performance Obligation.

Beginning on the commencement of the first Term Year and for every Term Year thereafter, Seller shall be subject to the following electric energy delivery requirements and damages for failure to perform as set forth below.

(a) Performance Requirements.**(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 Section 1.01(e).

(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 Annual 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 3.05(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 an 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 (the "Energy Replacement Damage Amount").

Within ninety (90) days after the end of the applicable Term Year, SCE shall calculate any Energy Replacement Damage Amount as set forth in Exhibit F, and shall provide Notice to Seller of any Energy Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology and its annotated work papers and source data.

Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation 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 and its annotated work papers 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.

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

Receipt of the Energy Replacement Damages Amount shall be SCE's sole and exclusive remedy for any failure of Seller to meet Seller's Annual Energy Delivery Obligation or otherwise to deliver any particular amount of energy in the applicable Term Year even if caused by an event that would otherwise constitute a default hereunder, other than an Event of Default set forth in Section 6.01(c).

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

- (i) SCE shall prepare and provide to Seller within thirty (30) days after the end of each calendar quarter during each Calculation Period quarterly statements (each a "Quarterly Statement") showing the sum of Seller's Metered Amounts plus Lost Output for such completed calendar quarter, the pro rata portion of Seller's Annual Energy Delivery Obligation for such calendar quarter and, for informational and not billing purposes, any estimated Energy Replacement Damage Amount (as calculated in accordance with Exhibit F) that has accrued for such Calculation Period as of the end of such calendar quarter. SCE's Quarterly Statement shall be accompanied by a statement of all facts and information relied upon by SCE in formulating its calculation methodologies, including annotated work papers and source data.
- (ii) Seller shall have forty-five (45) days after receipt of a Quarterly Statement to review the statement and provide Notice to SCE of any dispute Seller has with the reported Metered Amounts, Lost Output, pro rata portion of Seller's Annual Energy Delivery Obligation or estimate of Energy Replacement Damage Amount for such Quarterly Statement. Seller's Notice shall include Seller's calculation of the

Metered Amounts, Lost Output, pro rata portion of Seller's Annual Energy Delivery Obligation or estimated Energy Replacement Damage Amount for the Calculation Period as of the end of such calendar quarter, and all facts and information relied upon by Seller in formulating its calculation methodologies and claims, including annotated work papers and source data.

- (iii) Seller shall make a good faith effort to ascertain and include in its Notice any and all disputes that it has with the Quarterly Statement. Seller shall not be deemed to have waived any dispute not included in its Notice if such a dispute is based upon information not within Seller's possession as of the date of such Notice and Seller promptly informs SCE of such dispute upon obtaining the relevant information.
- (iv) The Parties shall negotiate in good faith for a maximum of thirty (30) days to resolve any disputed portion of such Quarterly Statement and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute that each Party may possess which is requested by the other Party.

(d) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount or any dispute regarding a Quarterly Statement, Seller shall remain obligated to convey all electric energy generated by the Generating Facility and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE during the Term, as provided in Sections 3.01 and 3.02.

3.06 Metering, Communications, Telemetry and Meteorological Station.

(a) SCE Meter.

Seller, at SCE's expense, shall allow SCE to install meters and telecommunication equipment required by SCE to monitor the Generating Facility, provided that such meters and equipment, and their installation, shall not interfere with Seller's operation of the Generating Facility.

Such equipment shall include one or more SCE-approved revenue quality meters, an SCE-approved data processing gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real-time, all electric energy produced by the Generating Facility less Permitted On-Site Loads (collectively the "SCE Meter").

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(b) Access to SCE Meter.

Subject to Section 3.16, Seller shall grant SCE reasonable access to the meter(s) for meter readings and any purpose necessary to effectuate this Agreement; *provided*, that SCE shall comply with any safety, health, or environmental procedures or protocols of Seller of which SCE has received reasonable prior written notice.

(c) Communication of Real-Time Data to SCE.

- (i) Data from the equipment installed pursuant to Section 3.06(a) above to provide SCE the ability to monitor, in real time, all electric energy generated by the Generating Facility shall be centralized into a common supervisory and data acquisition system, otherwise known as SCADA.
- (ii) Such equipment shall be accessed by SCE via SCE's Generation Management System.
- (iii) Seller shall provide operational consent for SCE to use a remote intelligent gateway, otherwise known as a RIG, or data processing gateway, otherwise known as a DPG as the network communication interface into the site control system.
- (iv) The connection shall be bidirectional in nature and used to exchange all data points to and from SCE's Generation Operation Center.
- (v) The above-mentioned connections and data transfer shall be included in the systems engineering tasks as a part of the construction of the Generating Facility, and shall be fully functional prior to Initial Operation.

3.07 Site Control.

- (a) On or before Initial Operation, Seller shall have Site Control, which means that Seller shall:
 - (i) Own the Site;
 - (ii) Be the lessee of the Site under a Lease;
 - (iii) Be the holder of a right-of-way grant or similar instrument or an easement or similar right with respect to the Site; or

- (iv) Be in control of, or be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and the Generating Facility.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.
- (c) Seller shall provide SCE with Notice of the status of its Site Control prior to commencing construction of the Generating Facility.

3.08 Site Location.

This Agreement is Site specific as set forth in Section 1.01(b).

Seller may, with SCE's prior written consent, change the location of the Site; *provided* that, the interconnection point with the Transmission Provider is not changed.

Seller shall promptly provide a revised Exhibit B describing any new Site in the event Seller requests SCE's consent to change the Site location.

3.09 Design.

As between Seller and SCE, at no cost to SCE, Seller shall be responsible for:

- (a) Designing and constructing the Generating Facility.
- (b) Using commercially reasonable efforts to acquire all Permits.
- (c) Providing to SCE, at least thirty (30) days prior to the anticipated Initial Operation Date, the following Generating Facility information:
 - (i) Site plan drawings for the Generating Facility;
 - (ii) Electrical one line diagrams;
 - (iii) Control and data acquisition details and configuration documents;
 - (iv) Major electrical equipment specifications;
 - (v) General arrangement drawings;
 - (vi) Longitude and latitude of each generator;
 - (vii) Artist renderings of the Site, if any;

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- (viii) Aerial photographs of the Site, if any;
 - (ix) Site plan drawing of the geothermal well field (including production and injection well drawing plans);
 - (x) Process flow diagrams; and
 - (xi) Piping and instrumentation diagrams.
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed material changes in Seller's Generating Facility, not including repair or maintenance of existing equipment in the ordinary course of business, but in no event less than thirty (30) days before the changes are to be made, which such Notice shall include the information set forth in Section 3.09(c) above, along with all specifications and drawings pertaining to any such changes and any changes to Exhibit B.

3.10 Operation and Record Keeping.

- (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 the following information:
 - (i) Availability;
 - (ii) Circuit breaker trip operations;
 - (iii) Any significant events related to the Operation of the Generating Facility;
 - (iv) Real and reactive power and energy production;
 - (v) Changes in Operating status;
 - (vi) Protective apparatus operations;
 - (vii) Any unusual conditions found during inspections;
 - (viii) Electric energy production, fuel consumption and efficiency (if applicable); and
 - (ix) Status and settings of generator controls including automatic voltage regulator and power system stabilizer.

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

- (c) Seller shall keep a maintenance log for the Generating Facility that shall include information on maintenance (both breakdown and preventative) performed, outages, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.
- (d) Information maintained pursuant to this Section 3.10 shall be kept for no less than seven (7) years and shall be provided or made available to SCE within twenty (20) days after any Notice, provided SCE requests such information within such seven (7) year period.

3.11 Cooperation Regarding Scheduling Coordinator Services

Seller shall cooperate reasonably and in good faith with SCE to enable SCE to Schedule to CAISO the electric energy produced by the Generating Facility.

3.12 Forecasting.

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

3.13 Scheduled Outages.

- (a) No later than January 15th, April 15th, July 15th and October 15th of each year during the Term, and at least sixty (60) days prior to the Initial Operation Date, Seller shall submit to SCE its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using an SCE-provided web-based system ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within twenty (20) Business Days after SCE's receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE's requests regarding the timing of

any planned outage; provided that Seller shall not be required to change its Outage Schedule if the change in Outage Schedule requested by SCE is to occur within six (6) months of SCE's Notice and Seller will incur material incremental costs or reduced revenues as a result. Seller shall notify SCE within ten (10) Business Days of receiving SCE's Notice requesting a change in Outage Schedule if Seller believes that it is not required to make the change requested by SCE as provided above.

- (d) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to SCE, using the Web Client, of such change (including, an estimate of the length of such planned outage) promptly after the condition causing the change becomes known to Seller.
- (e) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.
- (f) Seller shall comply with the Scheduling requirements and procedures set forth in Section 3.03 and otherwise in this Agreement at its sole expense.

3.14 Progress Reporting Toward Meeting Milestone Schedule.

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

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

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

3.15 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto, which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information;
- (b) All applications and approvals relating to CEC Certification and Verification and Permits;
- (c) All draft, preliminary, final and revised copies of reports, studies and analyses furnished by the CAISO, or any Transmission Provider, and any CAISO correspondence related thereto, concerning the transmission of electric energy from the Generating Facility to the Delivery Point;
- (d) All notifications of adjustments in the Line Loss Factor used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility within thirty (30) days of receiving such notification from the Transmission Provider;
- (e) 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; and
- (f) At least thirty (30) days prior to Initial Operation, Seller shall provide SCE with all Generating Facility and metering information as may be reasonably requested by SCE, including the following (which the Parties hereby deem to be reasonably requested):
 - (1) Utility transmission/distribution one line diagram;
 - (2) Physical location, address or descriptive identification;
 - (3) Latitude and longitude;
 - (4) Telephone number on site;
 - (5) Telephone number of control room;
 - (6) Telephone number for operational issues; and
 - (7) Telephone number for administrative issues.

3.16 SCE's Access Rights.

Seller shall grant SCE the right of ingress and egress, upon reasonable notice, to examine the Site and Generating Facility for any purpose reasonably connected with

this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC. SCE agrees to comply with all safety and security rules at Seller's Site.

3.17 Obtaining and Maintaining CEC Certification and Verification.

Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term; provided however, that

- (a) This obligation shall not apply to the extent that Seller is unable to obtain or maintain the CEC Certification and Verification using commercially reasonable efforts because of (i) a change in the RPS Legislation occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting CEC Certification and Verification occurring after the Effective Date; and
- (b) The term "commercially reasonable efforts" in Section 3.17(a) of this Agreement shall not require Seller to pay or incur more than fifteen thousand dollars (\$15,000) per year to obtain and maintain such CEC Certification and Verification.

3.18 Notice of Cessation or Termination of Service Agreements.

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

3.19 Lost Output Report.

- (a) Quarterly Report; SCE Review.

Commencing upon Initial Operation and continuing throughout the Term, Seller shall calculate Lost Output and prepare and provide to SCE a Lost Output Report by the tenth (10th) Business Day of each calendar quarter in accordance with Exhibit M.

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

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

(b) Disputes of Lost Output.

If SCE disputes Seller's Lost Output calculation, it shall provide Notice to Seller within thirty (30) days after receipt of Seller's Lost Output Report and include SCE's calculations and other data supporting its position. SCE shall make a good faith effort to include in its Notice any and all disputes that it has with Seller's Lost Output Report. SCE shall not be deemed to have waived any dispute not included in its Notice if such a dispute is based upon information not within SCE's possession as of the date of such Notice and SCE promptly informs Seller of such dispute upon obtaining the relevant information.

The Parties shall negotiate in good faith to resolve any dispute.

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

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

(c) Energy Replacement Damage Amount Calculation.

The Lost Output amount that shall be used in the Energy Replacement Damage Amount calculation, set forth in Exhibit F, shall be the amount calculated after the twelfth (12th) month of the Term Year.

3.20 CAISO Charges.

After Initial Operation.

- (a) Commencing upon Initial Operation and continuing throughout the Term, Seller shall be responsible for, or receive the benefit of, as the case may be, all CAISO Charges incurred.
- (b) Seller shall make payments to SCE for CAISO Charges that require payments by SCE to CAISO, and SCE shall make payments to Seller for

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CAISO Charges that involve credits from CAISO to SCE; provided that the CAISO Charge payment due Seller for any given Scheduling interval shall not exceed the product of the Contract Price and the Deviation in such Scheduling interval.

- (c) If Seller disputes any CAISO Charge, Seller shall provide Notice of such dispute within five (5) Business Days of becoming aware of such CAISO Charge.
- (d) The CAISO Charges will be available for billing approximately one hundred twenty (120) days following the last day of a calendar month or thirty (30) days after the CAISO final settlement data is available to SCE, whichever is sooner.
- (e) SCE shall provide to Seller the applicable back-up data used for validating CAISO Charges.

3.21 Change in Revenue Notification; Seller's Financial Information for Consolidation.

- (a) In the event Seller determines that the revenue received or to be received by Seller from this Agreement for any calendar year is or is likely to be less than ninety percent (90%) of Seller's total anticipated revenue for such calendar year, Seller shall provide Notice of such determination to SCE as soon as practicable after such determination is made, but in no event later than forty-five (45) days before the end of such calendar year.
- (b) After receipt of such Notice, SCE shall require Seller to provide certain financial information in accordance with Exhibit R in order to determine if SCE, or its parent company, may have to consolidate Seller's financial information for securities reporting purposes.

3.22 Application of Prevailing Wage.

To the extent applicable, Seller shall comply with the prevailing wage requirements of Public Utilities Code Section 399.14, subdivision (h).

*** End of ARTICLE THREE ***

ARTICLE FOUR. SCE’S OBLIGATIONS

4.01 Obligation to Pay.

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

SCE shall not be obligated to purchase from Seller any Product prior to the commencement of the Term or any electric energy that is not Scheduled as a result of any circumstance, including:

- (a) An outage of the Generating Facility;
- (b) A Force Majeure under Article Five;
- (c) A reduction or curtailment of Scheduled Amounts ordered by the CAISO or as necessary in response to an Emergency (provided that SCE shall not discriminate against Seller in implementing any curtailment), or
- (d) A reduction or curtailment of Metered Amounts pursuant to the terms of an agreement with a Transmission Provider.

4.02 Payments and Adjustments.

(a) Energy Payment Calculations.

For the purpose of calculating monthly payments for Product delivered to SCE as of Initial Operation in accordance with the terms of this Agreement (“Energy Payments”), Scheduled Amounts shall be time-differentiated according to the time period and season of delivery (“TOD Periods”) set forth in Exhibit K and the pricing shall be weighted by the Energy Payment Allocation Factors set forth in Exhibit K.

Monthly Energy Payments shall equal the sum of the TOD Period Energy Payments for all TOD Periods in the month. Each TOD Period Energy Payment 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 Section 1.05 in \$/kWh (i.e., \$/MWh/1000).

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B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.

C = The sum of Scheduled Amounts in all hours for the TOD Period being calculated in kWh.

(b) Payment Adjustments.

If, in any Term Year, the Scheduled Amounts exceed an amount equal to the product of 1.05 and the Delivered Amounts, *then* Seller's monthly Energy Payment may be subject to an adjustment calculated by SCE in accordance with the procedures set forth in Exhibit E.

4.03 Payment Statement and Payment.

(a) No later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is a weekend day or holiday during which:

- (i) Scheduled Amounts are provided to SCE;
- (ii) Adjustments for payment errors are made as set forth below;
or
- (iii) CAISO Charges are incurred.

SCE shall do each of the following:

- (iv) Send a statement to Seller showing:
 - (1) The Scheduled Amounts for each TOD Period during the month for which the payment is being made;
 - (2) The CAISO Charges incurred;
 - (3) A calculation of the amount payable to Seller for the month pursuant to Section 4.02; and
 - (4) A calculation of the net amount due Seller.
- (v) Send to Seller, via wire transfer, SCE's payment of said net amount, plus a Simple Interest Payment calculated using the Interest Rate and the number of days that the payment is late.

- (b) In the event SCE determines that a calculation of Delivered Amounts, or CAISO Charges is incorrect as a result of meter inaccuracy, SCE shall promptly recompute Delivered Amounts or CAISO Charges for the period of the inaccuracy based upon an adjustment of inaccurate meter readings, correction of data or recalculation of CAISO Charges in accordance with the CAISO 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 payment statement that is calculated after SCE's recomputation using corrected measurements.

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

At SCE's discretion, SCE may net any remaining amount owed SCE on any subsequent monthly payment statement to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

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

- (c) Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement in payment of any amounts owing and unpaid by Seller to SCE under this Agreement.

Nothing in this Section 4.03(c) shall limit SCE's rights under applicable tariffs, other agreements between the Parties or Applicable Law.

- (d) Waiver.

Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if within ninety (90) days after receipt of SCE's payment statement, Seller does not give Notice to SCE of an error, *then* Seller shall be deemed to have waived any error in SCE's 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 after the expiration of the original ninety (90) day period, Seller shall have an additional forty five (45) days from the date on which it receives the information in which to give Notice to SCE of the error identified by such settlement, audit or other information.

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

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

Late payments to Seller resulting from SCE's errors, or overpayments to Seller by SCE, shall include a Simple Interest Payment calculated using the Interest Rate and the number of days between the date due (or, in the case of overpayments by SCE, commencing five (5) Business Days from the date SCE provides Notice of such overpayments to Seller) and the date paid; *provided, however*, that changes made because of settlement, audit or other information not available to SCE when it rendered its original statement shall not bear interest.

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

The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a payment statement.

Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the mediation and arbitration as provided in Article Twelve.

4.04 Cooperation with Seller.

SCE, at its own cost and expense, shall cooperate reasonably with Seller to permit Seller to effectuate its Scheduling obligations hereunder and to take delivery of Seller's Scheduled Amounts.

SCE shall be responsible for arranging for and bearing all risks and costs associated with transmitting Product at and after the Delivery Point.

4.05 SCE Meter Maintenance.

- (a) The SCE Meter shall be tested by SCE, at SCE's expense, at least once each year.
- (b) SCE shall provide Seller reasonable notice of testing and Seller shall have the right to have a representative present on such occasions.

4.06 Interest Payments on Cash Deposits.

- (a) SCE shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the:
 - (i) Development Security; and
 - (ii) Performance Assurance.
- (b) Upon receipt of a monthly invoice (provided by Seller to the SCE Manager of Credit and Collateral as set forth in Exhibit C) that sets forth the calculation of the Simple Interest Payment amount due, SCE shall make payment thereof by the third (3rd) Local Business Day of the first month after the last month to which the invoice relates so long as such date is after the day on which such invoice is received; *provided* that,
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:

- (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
- (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

*** End of ARTICLE FOUR ***

ARTICLE FIVE. FORCE MAJEURE**5.01 No Default for Force Majeure.**

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

5.02 Requirements Applicable to the Claiming Party.

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

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

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

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

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

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

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

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

5.03 Startup Deadline Extension.

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If Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, *then* the Startup Deadline shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.04 Firm Operation Date Extension.

If Force Majeure occurs at any time after commencement of the Term, but prior to the Firm Operation Date, which prevents Seller from demonstrating the Contract Capacity as provided in Sections 3.04(d) or 3.04(e), *then* the Firm Operation Date shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 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 prevents material performance by the other Party and extends for more than three hundred sixty five (365) consecutive days.

*** 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) With respect to either Party:
 - (i) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if:
 - (1) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
 - (2) 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;
 - (ii) 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 in which case any cure period set forth for such separate Event of Default would be applicable 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 failure; *provided* that, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment, including not making when due any portion of a payment required under this Agreement (other than payments disputed in good faith accordance with the dispute resolution terms of this

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- Agreement) and such failure is not cured within five (5) Business Days after Notice of such failure;
- (iv) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within three (3) Business Days after Notice of such failure;
 - (v) A Party becomes Bankrupt; or
 - (vi) A 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;
- (b) With respect to Seller's Guarantor (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) If any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;
 - (iii) A Guarantor becomes Bankrupt and Seller fails to procure replacement Performance Assurance satisfactory to SCE in its sole discretion or a replacement Guaranty Agreement acceptable to SCE under Section 8.02 within five (5) Business Days, or if paragraphs (c) or (e) in the definition of "Bankrupt" apply, then five Business Days after Notice from SCE;
 - (iv) The failure of a Guarantor's Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in

- accordance with its terms) and not replaced with a substitute Guaranty Agreement acceptable to SCE under Section 8.02 within five (5) Business Days of Notice from SCE;
- (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE and Seller fails to procure replacement Performance Assurance satisfactory to SCE in its sole discretion or a replacement Guaranty Agreement acceptable to SCE under Section 8.02 within five (5) Business Days;
 - (vi) The occurrence and continuation of a default, event of default or other similar condition or event (but not an event or circumstance that would become an “event of default” or other similar condition or event with notice and/or passage of time) under one or more agreements or instruments of the Guarantor, individually or collectively, relating to indebtedness of the Guarantor for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable and Seller fails to procure replacement Performance Assurance satisfactory to SCE in its sole discretion or a replacement Guaranty Agreement acceptable to SCE under Section 8.02 within five (5) Business Days of Notice from SCE; or
 - (vii) The occurrence and continuation of a default by the Guarantor in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount and Seller fails to procure replacement Performance Assurance satisfactory to SCE in its sole discretion or a replacement Guaranty Agreement acceptable to SCE under Section 8.02 within five (5) Business Days of Notice from SCE.
- (c) With respect to Seller:
- (i) Seller fails to post and maintain the Development Security pursuant to Section 3.04(b), and such failure is not cured within five (5) Business Days after Notice of such failure;

- (ii) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a)(iv) and Seller has not cured a failure with respect to Section 3.07(a) within the earlier of thirty (30) days after providing Notice in accordance with Section 3.07(b) or sixty (60) days after the occurrence of the event which results in such failure;
- (iii) The sum of Metered Amounts plus Lost Output in any consecutive six (6) month period is not at least 10 percent (10%) of the Expected Annual Net Energy Production set forth in Section 1.01(e), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;
- (iv) The Metered Amounts in any one hour interval, in kWh/hr, exceed one hundred twenty percent (120%) of the Contract Capacity set forth in Section 1.01(d) to this Agreement, (an "Event of Excess Deliveries"), without the prior written consent of SCE, and within ten (10) Business Days after Notice, Seller fails to demonstrate to SCE's satisfaction that it has identified the reason that the Event of Excess Deliveries occurred and that it has or is employing best efforts to ensure that no additional Events of Excess Deliveries will occur during the Term;
- (v) Seller intentionally or knowingly delivers or 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 other than imbalance energy provided by Seller's Transmission Provider in the ordinary course as permitted under Section 3.01 and as otherwise not prohibited under this Agreement.
- (vi) Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment or a suitable replacement reasonably acceptable to SCE is not returned within five (5) Business Days (or such other period as may be appropriate in SCE's reasonable discretion) after Notice from SCE;
- (vii) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(c).

- (viii) Subject to Section 3.17, the Generating Facility fails to qualify as an ERR under the law in effect as of the Effective Date;
- (ix) Subject to Section 3.17, any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as eligible renewable energy for purposes of the RPS Legislation under the law in effect as of the Effective Date (other than imbalance energy provided in the ordinary course);
- (x) Seller fails to achieve Initial Operation within the timeframes set forth in Section 2.03, as may be extended pursuant to this Agreement, and such failure is not cured within five (5) Business Days after Notice from SCE;
- (xi) A termination of, or cessation of service under, any agreement to which Seller is a party, which agreement is necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or transmission of the electric energy to the Delivery Point, for Scheduling to SCE, or for metering the Metered Amounts, and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation; and
- (xii) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit as and to the extent required in Section 3.01.

6.02 Early Termination.

If an Event of Default shall have occurred and is continuing the Party not in default (the "Non-Defaulting Party") shall have the right:

- (a) To designate by Notice, a day, no earlier than twenty (20) calendar days and not later than sixty (60) days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) To immediately suspend performance under this 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, less any amounts owed by the Non-Defaulting Party to the Defaulting Party, including the Forward Settlement Amount (the “Termination Payment”).

The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment including the calculation of 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.

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

In the event that a Party is to receive a Termination Payment for an Early Termination Date, such Termination Payment, once paid in full and credited to the account of the receiving Party, shall be the sole and exclusive remedy for the breach that was the basis of the designation of such Early Termination Date and for any obligation that does not survive termination; provided that nothing in this Section 6.03 shall limit either Party’s right to enforce any obligations that survive termination.

*** End of ARTICLE SIX ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

SUBJECT TO SECTION 10.16, 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 PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION 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.

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NOTHING IN THIS SECTION PREVENTS, OR IS INTENDED TO PREVENT SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTERESTS IN COLLATERAL.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, THE VALUE OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT, IF ANY, SHALL BE DEEMED DIRECT DAMAGES RECOVERABLE UNDER THIS AGREEMENT.

**** 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(s) containing audited consolidated financial statements for such fiscal year, provided that if no audited consolidated financial statements were prepared, unaudited financial statements are acceptable;
- (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(s) 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 GAAP; *provided* that, should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

8.02 Performance Assurance.

- (a) Posting Performance Assurance.

On or before the commencement of the Term, Seller shall post Performance Assurance with SCE.

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

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

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to SCE, provided that on the commencement of the Term, if Seller has posted the Development Security in the form of cash or a Letter of Credit and SCE has not either returned the Development Security to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Security by such date, *then*

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Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 3.04 and Exhibit L, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, SCE may accept a Guaranty Agreement, in accordance with Section 8.02(c), from a Guarantor acceptable to SCE to satisfy Seller's Performance Assurance obligation.

(b) Letters of Credit.

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

- (i) Each Letter of Credit shall be maintained for the benefit of SCE.
- (ii) 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 the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within five (5) Business Days after such refusal;
- (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the third Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only Section (a) in the definition of "Letter of Credit Default" in Exhibit A applies);

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

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

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

- (1) Failure to provide or maintain sufficient Performance Assurance; or
 - (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, enforcing and increasing the amount of a Letter of Credit shall be borne by Seller, provided that SCE shall bear its own costs, including costs of outside counsel, associated with the establishment, maintenance, renewal, substitution, increase or cancellation of SCE's rights and obligations in connection with any Letter of Credit.
- (c) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, it shall be in the form of Exhibit I executed by the Guarantor identified in Section 1.07 or other party 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, Seller shall provide to SCE Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to SCE, within five (5) Business Days.

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

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, the Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 3.04 and 8.02 and any and all interest thereon or proceeds resulting therefrom or from 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 to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default attributable to a failure to perform by Seller, SCE may do any one or more of the following:

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

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

8.04 Step-In Rights.

If an Event of Default associated with a failure to perform by Seller occurs and is not cured within the applicable cure period set forth in Section 6.01, or any extended cure period provided to a Lender by SCE as set forth in Section 10.05, SCE shall have the right, but not the obligation, to assume Operational control 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 to SCE (the "Step-In Rights"); provided that prior to exercising its Step-In Rights, SCE shall first provide written notice to any Lender of its intention and permit the Lender a reasonable amount of time (to be no less than ninety (90) days) to assume operational control of the Generating Facility in accordance with any financing agreements between Seller and the Lender.

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 8.04 and industry practices and standards, which Operations Agreement shall, among other things, provide for continued sales from Seller to SCE under the terms of this Agreement and is 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 8.04 be deemed to be a transfer of title of the Generating Facility or a transfer of Seller's obligations as owner thereof.
- (c) SCE shall not be liable for any claims, losses or liabilities of any kind associated with the Generating Facility, other than as a direct result of its Operation of the Generating Facility during the period in which SCE

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assumes operational control of the Generating Facility under this Section 8.04.

8.05 Credit and Collateral Covenants.

Subject to Section 1.01(d):

- (a) Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and Operation of the Generating Facility;
- (b) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

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

ARTICLE NINE. GOVERNMENTAL CHARGES**9.01 Cooperation to Minimize Tax Liabilities.**

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

9.02 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Delivered Amounts (and any contract associated with the Delivered Amount) and the Scheduled Amounts arising prior to and at the Delivery Point, including 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, warrants and covenants 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 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, any legal proceedings that could materially adversely affect its ability to perform under this 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 are not contained in this Agreement in deciding to enter into this Agreement;

- (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; and
- (i) It shall act in good faith in its performance under this Agreement.

10.02 Additional Seller Representations, Warranties and Covenants.

Seller hereby represents, warrants and covenants to SCE that throughout the Term, except as otherwise permitted under this Agreement:

- (a) It shall own and Operate the Generating Facility;
- (b) It shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
- (c) It shall hold the rights to all Green Attributes, Capacity Attributes and Resource Adequacy Benefits, which it conveys and has committed to convey to SCE hereunder;
- (d) Subject to Section 3.17, the Generating Facility shall qualify and be certified by the CEC as an ERR as of the Effective Date and continuing until the end of the Term;
- (e) Subject to Section 3.17, the electric energy produced by the Generating Facility and delivered to SCE shall qualify as eligible renewable energy under the requirements of the RPS Legislation as of the Effective Date and continuing until the end of the Term;
- (f) It shall maintain and remain in material compliance with all Permits;
- (g) It shall have all Permits, interconnection agreements and transmission rights necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point; and
- (h) In addition, Seller represents, warrants and covenants to SCE that, with respect to the Generating Facility for the purposes of this Agreement, Seller does not intend to and shall not apply for, receive or utilize production incentives or supplemental energy payments pursuant to Sections 25742 or 25743 of the Public Resources Code.

10.03 Indemnity.

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (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 of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee. However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.

- (b) Each Party releases and shall defend, 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) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, 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 10.11.

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

- (e) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

- (f) Seller shall defend, save harmless and indemnify SCE against any penalty imposed upon SCE as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth under Sections 3.01 and 3.02 after the Initial Operation Date.
- (g) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

10.04 Assignment.

- (a) Except as provided in Section 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Seller may assign this Agreement to an Affiliate of equal or better credit standing and operational capabilities to that of Seller as of the date of the proposed transfer.
- (b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld.

10.05 Consent to Collateral Assignment.

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

In connection with, any financing or refinancing of the Generating Facility by Seller, SCE 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 reasonably agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by any Lender that are reasonably acceptable to SCE):

- (a) SCE shall give, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and prior to exercising its right to terminate this Agreement, written Notice of any event or circumstance known to SCE which would, if not cured within the applicable cure period as specified in Article Six, constitute an Event of Default (an "Incipient Event of Default");

- (b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller.
- (c) Following an Event of Default by Seller under this Agreement, SCE may require Seller to (although Lender may, but shall have no obligation, subject to 10.05(g)), provide to SCE a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

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

- (d) Lender shall have the right to cure an Event of Default or Incipient 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 may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day SCE does not provide the Notice to Lender referred to in Section 10.05(a). In addition, such cure period may, in SCE's reasonable discretion, be extended by no more than an additional one hundred eighty (180) days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within sixty (60) days after receipt of such Notice from SCE, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed one hundred eighty (180) days

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after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;

- (e) Lender shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;
- (f) Lender shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;
- (g) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the entity taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement); provided that, Lender (or such entity) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date (but this provision shall not be interpreted to limit SCE's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such entity's) liability to SCE after such assumption shall be limited to its interest in the Generating Facility; *provided, however*, that prior to such assumption, if SCE advises Lender (or such entity) that SCE will require that Lender (or such entity) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such entity takes title in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, *then* Lender (or such entity) at its option; and in its sole discretion, may elect to either:
 - (i) Cause such Incipient Event(s) of Default or Event(s) of Default to be cured, or
 - (ii) Not assume this Agreement.

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (h) If Lender has assumed this Agreement as provided in Section 10.05(g) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Affiliate of Lender or an Affiliate of Seller is the buyer), *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 excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Affiliate of Lender or an Affiliate of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding however, a foreclosure) may be made only to a Permitted Transferee or to an entity with financial qualifications and operating experience equivalent to Seller that is reasonably acceptable to SCE; and
- (i) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either SCE or Lender, SCE and Lender (or its designee or representative) shall promptly enter into a new agreement with SCE having substantially the same terms as this Agreement for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor SCE shall have any personal liability to the other for any amounts owing and neither SCE nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

10.06 Abandonment.

Seller shall not relinquish its possession and control of the Generating Facility without the prior written consent of SCE except under circumstances provided for in Section 10.05.

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

possession of the Generating Facility if, and for so long as, Seller is attempting in good faith to restore production and delivery of the Product.

10.07 Governing Law.

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

10.08 Notices.

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

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

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

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

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

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

All notices, requests, statements or payments for this Generating Facility must reference the contract identification ("RAP ID") number set forth on the title page to this Agreement.

10.09 General.

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement shall include the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they shall be considered as 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 between the Parties. In the event of an apparent contradiction between this Agreement and any such other agreement in respect of transmission, distribution, metering, scheduling or interconnection services, the other agreement shall control.
- (l) Except as otherwise expressly provided herein, 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 RAP ID number to this Agreement for tracking purposes only.
- (n) SCE's obligation to take and pay for electric energy produced by the Generating Facility, together with Green Attributes, Resource Adequacy Benefits and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of the RPS Legislation.
- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- (p) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

10.10 Confidentiality.

(a) Terms and Conditions of this Agreement.

Neither Party shall disclose Confidential Information to a third party, other than:

- (i) To such Party's employees, Lenders, counsel, accountants or advisors, Affiliates, investors, in each case who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To potential Lenders with the consent of SCE, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that disclosure:
 - (1) Of cash flow and other financial projections to any potential Lender in connection with a potential loan or tax equity investment; or
 - (2) To potential Lenders with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, shall not require such consent of SCE, and provided further that, in each case such potential Lender has a need to know such

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information and has agreed to keep such terms confidential;

- (iii) To SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to any confidentiality agreements or laws, regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
- (iv) To the CPUC under seal for purposes of review subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
- (v) To the CAISO in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electric energy sold or to be sold to SCE hereunder so long as the disclosing Party uses reasonable efforts to maintain the confidentiality of Confidential Information;
- (vi) In order to comply with any Applicable Law or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Disclosing Party, other than to those entities set forth in Section 10.10(a)(vii);
- (vii) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, FERC, the Securities and Exchange Commission, any court, administrative agency, legislative body or other tribunal, or any mandatory discovery or data request of a party to any proceeding pending before any of the foregoing;
- (viii) To any governmental body, the CPUC, the CAISO or any local control area or regional authority having jurisdiction in order to support SCE's resource adequacy requirement showings, if applicable; provided, that SCE shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable governmental body, CAISO, local control area or regional authority to further disclose such information;
- (ix) As may reasonably be required to participate in any auction, market or other process pertaining to the allocation of

The contents of this document are subject to restrictions on disclosure as set forth herein.

priorities or rights related to the transmission of electric energy sold or to be sold to SCE hereunder;

- (x) As may reasonably be required to participate in the Western Renewable Energy Generation Information System (“WREGIS”) or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility.
- (xi) To representatives of a Party’s credit ratings agencies:
 - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes and have agreed to keep such information confidential; or
 - (2) With respect to the potential impact of this Agreement on the Party’s financial reporting obligations.
- (xii) Disclosure of terms specified in and pursuant to Section 10.10(c);
- (xiii) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in Sections 10.10(a)(vi) and 10.10(a)(vii) (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts to:
 - (1) Notify the other Party prior to disclosing the confidential information; and
 - (2) Prevent or limit such disclosure.

After using such reasonable efforts, the Disclosing Party shall not be:

- (3) Prohibited from complying with a Disclosure Order; or
- (4) Liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information.

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

The contents of this document are subject to restrictions on disclosure as set forth herein.

Note: By checking this blank, Seller agrees to waive the right to notification under clause (1) above: ____.

(b) Non-Disclosure Agreement.

(i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein (the “NDA”), and the termination date of that agreement is modified such that it will terminate on the later of:

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

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

(ii) Notwithstanding Section 6 of the NDA, the term “Confidential Information” as used in the NDA (and incorporated herein) shall be deemed to include (in addition to the information described in the NDA) this Agreement and all oral or written communications exchanged between the Parties pursuant to this Agreement, except for communications and information described in Section 4 of the NDA.

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

(c) RPS Confidentiality.

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

- (i) Party names;
- (ii) ERR type;
- (iii) Term;

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (iv) Generating Facility location;
- (v) Delivery Point;
- (vi) Generating Facility's expected energy deliveries;
- (vii) Initial Operation Date; and
- (viii) Contract Capacity.

10.11 Insurance.

- (a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate.

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; and
 - (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

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

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

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

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

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

10.12 Nondedication.

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

10.13 Mobile Sierra.

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

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

10.14 Simple Interest Payments.

Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

10.15 Payments.

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

10.16 Injunctive Relief.

The contents of this document are subject to restrictions on disclosure as set forth herein.

Notwithstanding anything in this Agreement to the contrary, each Party acknowledges and agrees that irreparable damage would occur in the event any of the provisions of Sections 2.05(b), 3.01, 3.02, 3.04(e), 3.07 or 10.10 of this Agreement were not performed in accordance with the terms thereof, that money damages may not be a sufficient remedy for any such breach and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a temporary restraining order, preliminary injunction or other provisional relief as a remedy for any such breach, notwithstanding the obligation to submit all other disputes (including all claims for monetary damages under this Agreement) to mediation and arbitration under Section 12.01. The Parties further acknowledge and agree that the results of such mediation and arbitration may be rendered ineffectual without such provisional relief. Such request for provisional relief shall not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 12.01, or release the Party from the requirements set forth in Section 12.01 with respect to the submission of claims for monetary damages under this Agreement, notwithstanding any prohibitions against claim-splitting or other similar doctrines. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or, if the Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

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

ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN**11.01 Changes Rendering this Agreement Incapable of Performance.**

If a Change in CAISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, or results, or could reasonably be forecasted to result, in a CAISO 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 this Agreement necessary to make this Agreement capable of being performed and administered or to minimize CAISO Change Cost Payments, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this 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 after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, *then* either Party may submit issues pertaining to changes to this Agreement to mediation and arbitration as provided in Article Twelve.

A change in cost shall not in itself be deemed to render this 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) CAISO Change Cost.**

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

Hereinafter, the total net incremental changes in CAISO Charges to Seller and Seller's Actual Revenue for any Term Year as a result of a Change in CAISO Tariff in the following specific circumstances shall be collectively referred to in the aggregate as the "CAISO 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, Metered Amounts or congestion charges to Seller resulting therefrom; and

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- (ii) The method of determining the energy cost component of the real time locational marginal price at the Delivery Point (or the substitute therefore provided in the CAISO Tariff) that is a component of CAISO Charges, or the timelines associated with the CAISO HASP.

The procedure for determining a CAISO Change Cost is described in Exhibit P.

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

- (b) CAISO Change Cost Payment.

Seller shall be reimbursed by SCE by the amount of the CAISO Change Cost above the CAISO Change Cost Threshold Amount if the CAISO Change Cost has been a cost to Seller, and SCE shall be paid by Seller by the amount of the CAISO Change Cost above the CAISO Change Cost Threshold Amount if the CAISO Change Cost has been a savings to Seller (each, a “CAISO Change Cost Payment”).

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

The procedure for addressing disputes related to a CAISO Change Cost determination is set forth in Section 11.03 below.

11.03 Procedure for Claiming a CAISO Change Cost Payment.

- (a) Notice of Claim for a CAISO Change Cost Payment.

If either Party believes that it is owed a CAISO 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 CAISO Change Cost Payment.

Such a Notice must include the Party’s explanation for its claim that a Change in CAISO Tariff has occurred, the Party’s calculation supporting its CAISO Change Cost Payment claim in accordance with Exhibit P, and annotated workpapers and source data supporting the Party’s calculation.

- (b) Payment of Claim.

The contents of this document are subject to restrictions on disclosure as set forth herein.

Within forty-five (45) days from the date Notice of a CAISO Change Cost Payment is provided pursuant to this Section 11.03, a Party receiving a claim for a CAISO 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 CAISO Change Cost and any CAISO Change Cost Payment in accordance with Exhibit P 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 CAISO 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 J 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 CAISO 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.

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

ARTICLE TWELVE. MEDIATION AND ARBITRATION**12.01 Dispute Resolution.**

Any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Dispute"), which Dispute the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03 below.

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

12.02 Mediation.

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

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

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

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

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

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, shall not be subject to discovery and shall be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties,

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or either of them, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

12.03 Arbitration.

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

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

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.

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

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

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

Except as provided for herein, the arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated; absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq.* and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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.

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

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

Subject to Article Seven, the Arbitrator shall have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event that certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such

provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 2.05(b), 3.01, 3.02, 3.04(e), 3.07 or 10.10.

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 and any expert witnesses, 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* ***

RAP ID# 3108, ORNI 18, LLC

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

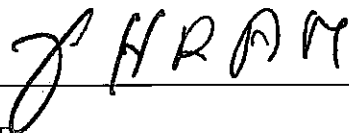
ORNI 18, LLC,

a Delaware limited liability company.

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California corporation.

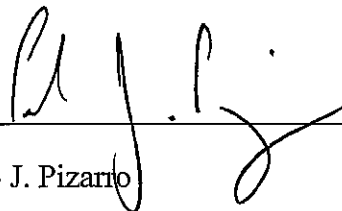
By:



Hezy Kam

Authorized Representative

By:



Pedro J. Pizarro

*Senior Vice President,
Power Procurement*

Date:

6-29-07

Date:

6/29/07

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By J Eric Isken
June 29 Attorney
20 07

The contents of this document are subject to restrictions on disclosure as set forth herein.

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

ORNI 18, LLC,
a Delaware limited liability company.

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

By: _____


Hezy Ram
Authorized Representative

By:  _____

Pedro J. Pizarro
*Senior Vice President,
Power Procurement*

Date: _____

Date: 6/29/07

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel
By:  _____
June 29, 2007
Attorney

RAP ID# 3108, ORNI 18, LLC

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

ORNI 18, LLC,

a Delaware limited liability company.

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California corporation.

By:

JHRAM

Hezy Rain

Authorized Representative

By:

Pedro J. Pizarro

*Senior Vice President,
Power Procurement*

Date:

6-29-07

Date:

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT A
Definitions

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT A
Definitions

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

1. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. 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.
2. “Agreement” has the meaning set forth in the Preamble.
3. “Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
4. “Arbitrator” has the meaning set forth in Article Twelve.
5. “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 which petition is not dismissed within sixty (60) days;
 - b) Makes an assignment or any general arrangement for the benefit of creditors;
 - c) Otherwise becomes bankrupt or insolvent (however evidenced);
 - d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
 - e) Is generally unable to pay its debts as they fall due.
6. “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. 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.
7. “CAISO” means the California Independent System Operator Corporation or successor entity.

The contents of this document are subject to restrictions on disclosure as set forth herein.

8. “CAISO Change Cost” has the meaning set forth in Section 11.02(a).
9. “CAISO Change Cost Payment” means a payment for any Term Year, either from SCE to Seller or from Seller to SCE, due to a CAISO Change Cost as described in Section 11.02(b).
10. “CAISO Change Cost Threshold Amount” means the threshold amount in Section 1.08 at the time any CAISO Change Cost Payment is calculated pursuant to Exhibit P.
11. “CAISO Charges” means the energy cost component of the published real time locational marginal price at the Delivery Point (or the substitute therefore provided in the CAISO Tariff in the event that such price is not published) for a given hourly scheduling interval multiplied by the difference between Seller’s Scheduled Amount as of the close of the CAISO HASP for such scheduling interval and the Delivered Amount for such scheduling interval (such difference, the “Deviation”), to the extent that SCE is assessed a charge or receives a credit for such energy cost component with respect to such Deviation.
12. “CAISO Grid” means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the CAISO’s operational control.
13. “CAISO HASP” means the hour ahead scheduling process to be implemented by CAISO under CAISO’s Market Redesign and Technology Update.
14. “CAISO 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.
15. “Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
16. “CEC” means the California Energy Commission.
17. “CEC Certification and Verification” means certification (or, with respect to periods before the Generating Facility has been constructed, pre-certification) by the CEC 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.

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18. “Change in CAISO Tariff” means that the CAISO Tariff has been changed and such change has, or would have had, a financial impact on either Party, or the CAISO has been dissolved or replaced and any successor to the CAISO operates under rules, protocols, procedures or standards that differ in a material respect from the CAISO Tariff, after the Effective Date.
19. “Claiming Party” has the meaning set forth in Section 5.02.
20. “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.
21. “Collateral Assignment Agreement” has the meaning set forth in Section 10.05.
22. “Confidential Information” has the meaning set forth in Section 10.10(b)(ii).
23. “Contract Capacity” means the electric energy generating capacity, set forth in Section 1.01(d), that Seller commits to install at the Site, net of Permitted On-Site Loads.
24. “Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.
25. “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.
26. “CPUC” means the California Public Utilities Commission.
27. “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
 - a) Approves this Agreement in its entirety, including payments to be made by SCE, subject to CPUC review of SCE’s administration of this Agreement; and
 - b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining SCE’s compliance with any obligation that it may have to procure eligible renewable

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energy resources pursuant to the RPS Legislation, CPUC Decision 03-06-071, or other Applicable Laws.

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

28. “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.
29. “Cross Default Amount” means the dollar amount set forth in Section 1.07(c).
30. “Daily Delay Liquidated Damages” has the meaning set forth in Section 3.04(c).
31. “Defaulting Party” has the meaning set forth in Section 6.01.
32. “Delivered Amounts” means the Metered Amounts adjusted by Delivery Losses.
33. “Delivery Losses” means all electric energy losses occurring between the SCE Meter and the Delivery Point as determined by reference to the Line Loss Factor.
34. “Delivery Point” means the point of interconnection between the Imperial Irrigation District, or its successor’s Control Area and the CAISO Control Area at Mirage, California.
35. “Demonstrated Contract Capacity” has the meaning set forth in Section 3.04(e).
36. “Demonstration Hour” means the date and hour selected by Seller, on or before the Firm Operation Date, during which Seller claims it has demonstrated the applicable Contract Capacity.
37. “Development Security” has the meaning set forth in Section 3.04.
38. “Deviation” has the meaning set forth in Section 11 of this Appendix A.
39. “Disclosing Party” has the meaning set forth in Section 10.10.
40. “Disclosure Order” has the meaning set forth in Section 10.10.
41. “Dispute” has the meaning set forth in Article Twelve.
42. “Early Termination Date” has the meaning set forth in Section 6.02.

The contents of this document are subject to restrictions on disclosure as set forth herein.

43. “Effective Date” has the meaning set forth in the Preamble.
44. “Emergency” means:
 - a) An actual or imminent condition or situation which jeopardizes the integrity of Transmission Provider’s electric system or the integrity of any other systems to which the Transmission Provider’s electric system is connected, as determined by the Transmission Provider in its reasonable discretion, or any condition so defined and declared by the CAISO; or
 - b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the Transmission Provider’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
45. “Energy Forecast(s)” means a forecast of Seller’s expected Scheduled Amounts submitted in accordance with Exhibit D.
46. “Energy Payment” has the meaning set forth in Section 4.02(a).
47. “Energy Payment Allocation Factor” has the meaning set forth in Exhibit K.
48. “Energy Price” means the energy price set forth in Section 1.05.
49. “Energy Replacement Damage Amount” has the meaning set forth in Section 3.05(b).
50. “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.
51. “ERR” means a generating facility that qualifies as an eligible renewable electric energy resource for purposes of the RPS Legislation.
52. “Event of Default” has the meaning set forth in Section 6.01.
53. “Event of Deficient Energy Deliveries” has the meaning set forth in Section 3.05(a)(ii).
54. “Event of Excess Deliveries” has the meaning set forth in Section 6.01(c)(iv).

55. “Expected Annual Net Energy Production” means the Generating Facility’s expected annual Metered Amounts set forth in Section 1.01(e).
56. “Federal Funds Effective Rate” means the annual interest rate posted opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
57. “Federal Production Tax Credit Legislation” means validly enacted Federal legislation extending the applicability and rate (including escalation as specified in 26 U.S.C. § 45) of the renewable energy production tax credit (26 U.S.C. § 45) to owners of generating facilities which use wind, closed-loop biomass, geothermal energy, and solar energy to produce electric energy which are placed in service on or before the Startup Deadline (as it may be adjusted under this Agreement), or such other date as may be agreed to in a writing signed by both Parties, on terms no less favorable to owners of wind, closed-loop biomass, geothermal energy, and solar energy generating facilities than those available with respect to such facilities placed in service on or after January 1, 2006 and before January 1, 2009 pursuant to the law governing Production Tax Credits as in effect on the Effective Date including, but not limited to, a tax credit allowable for at least ten years of at least \$19.00 per MWh in 2006 dollars adjusted for inflation as set forth therein.
58. “FERC” means the Federal Energy Regulatory Commission.
59. “Firm Operation Date” has the meaning set forth in Section 1.03.
60. “Force Majeure” means any occurrence that:
- a) In whole or in part:
 - i) Delays a Party’s performance under this Agreement;
 - ii) Causes a Party to be unable to perform its obligations; or
 - iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
 - b) Is not within the control of that Party; and
 - c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO (except as

set forth below) *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.

Force Majeure does not include:

- d) The lack of wind, sun or other fuel source of an inherently intermittent nature;
- e) Reductions in generation from the Generating Facility resulting from ordinary wear and tear, deferred maintenance or operator error; or
- f) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the CAISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.

- 61. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting the Energy Forecast(s) to SCE in accordance with Exhibit D.
- 62. "Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.

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

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

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

- 63. "GAAP" means generally accepted accounting principles.
- 64. "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, Market

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

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

65. “Generating Facility” means Seller’s electric generating facility as more particularly described in Exhibit B, 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.
66. “Geothermal Reservoir Report” means a report obtained by Seller from an expert independent consulting firm qualified in geothermal reservoir assessment which assesses the geothermal potential at the Site.
67. “Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor, dispatch, and control each Generating Unit.
68. “Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.
69. “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.
70. “Governmental Charges” has the meaning as set forth in Section 9.02.
71. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

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- 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), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and
- c) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do *not* include:

- d) Any energy, capacity, reliability or other power attributes from the Generating Facility;
- e) 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;
- f) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by Seller for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or
- g) Emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.

If the Generating Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributable to its fuel usage, it shall provide SCE with

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- sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facility.
72. “Guarantor” has the meaning set forth in Section 1.07.
73. “Guaranty Agreement” means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
74. “Initial Operation” has the meaning set forth in Section 2.03(b).
75. “Initial Operation Date” has the meaning set forth in Section 2.03(b).
76. “Interconnection Study” means any of the following studies as may be defined in the CAISO’s Tariff or the Transmission Provider’s tariff, as applicable:
- a) An interconnection feasibility study;
 - b) An interconnection system impact study; or
 - c) An interconnection facilities study.
77. “Interest Rate” means an annual rate equal to:
- a) The rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus
 - b) Two percentage points (2%);
- provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
78. “JAMS” has the meaning set forth in Article Twelve.
79. “kW” means a kilowatt of electric energy generating capacity.
80. “kWh” means a kilowatt-hour of electric energy.
81. “Lease” means one or more agreements whereby Seller leases the Site(s) described in Section 1.01(b) and Exhibit B from a third party.
82. “Lender” means any third party institution(s) or entity(ies) or successor(s) in interest or assignee(s) that provide(s) development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller or credit support in connection with this Agreement.

83. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and 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 and with a capital surplus of not less than one billion dollars (\$1,000,000,000) substantially in the form of Exhibit N and or in such other form as is acceptable to SCE.
84. “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:
- a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s;
 - b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
 - d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
 - e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates;
 - f) The issuer of such Letter of Credit becomes Bankrupt;

provided that, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

85. “Line Loss Factor” 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 Delivery Point.
86. “Local Business Day” means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the location specified in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.
87. “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of

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this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner, including any lost PTC benefits by Seller if and only if Seller can demonstrate that it is unable, after exercising commercially reasonable efforts to mitigate, to obtain such PTC benefits as a proximate result of any Event of Default by SCE or termination of the Agreement by Seller as a result of any Event of Default by SCE.

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

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

88. “Lost Output” means the sum of the Metered Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit M, but was not delivered due to:
- a) Force Majeure;
 - b) An Event of Default where SCE is the Defaulting Party;
 - c) A curtailment or reduction of deliveries ordered or caused by CAISO, or the Transmission Provider, *provided that*, the basis of such curtailment or reduction is not an event caused by Seller, or
 - d) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes.
89. “Lost Output Report” means the report of Lost Output in the form of the Lost Output Workbook prepared in accordance with the procedures set forth in Section 3.19 and Exhibit M.
90. “Lost Output Workbook” has the meaning set forth in Exhibit M.

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91. “Market Price” means the CAISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance electric energy, as such price or successor price is defined in the CAISO Tariff, that would apply at the Delivery Point, which values are, as of the Effective Date, posted by the CAISO on its website.

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

92. “Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
93. “Master File” has the meaning set forth in the CAISO Tariff.
94. “Mediator” has the meaning set forth in Article Twelve.
95. “Metered Amounts” means the electric energy produced by the Generating Facility net of Permitted On-Site Loads and expressed in kWh, as measured by the SCE Meter.
96. “Milestone Schedule” means Seller’s schedule to develop the Generating Facility as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.
97. “Moody’s” means Moody’s Investor Services, Inc.
98. “MW” means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
99. “MWh” means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
100. “Non-Defaulting Party” has the meaning set forth in Section 6.02.
101. “Notice” means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
102. “Non-Disclosure Agreement” or “NDA” has the meaning set forth in Section 10.10(b)(i).
103. “Operate,” “Operating” or “Operation” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment,

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- retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
104. “Outage Schedule” has the meaning set forth in Section 3.13.
105. “Party” or “Parties” have the meaning set forth in the Preamble.
106. “Performance Assurance” means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.06) for Seller’s performance under this Agreement in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
107. “Performance Assurance Amount” means the collateral amount for Performance Assurance set forth in Section 1.06.
108. “Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Generating Facility or to Schedule and deliver the electric energy produced by the Generating Facility to SCE.
109. “Permitted On-Site Loads” means energy consumed by the Generating Facility that is directly attributable to the generation of the Product (for example, through the use of production pumps, injection pumps, cooling tower pumps, cycle pumps and booster pumps, fans and Generating Facility station light and power).
110. “Permitted Transferee” means any entity with a parent or other Affiliate that:
- a) Has a combined Tangible Net Worth of not less than \$25,000,000; and
 - b) Has at least five (5) years of experience in the operation of geothermal power generation facilities (or shall have retained a reputable third party with such experience to operate and maintain the Generating Facility).
111. “Product” means:
- a) All electric energy produced by the Generating Facility, net of Permitted On-Site Loads; and
 - b) All Green Attributes, Capacity Attributes, and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility.
112. “Production Tax Credits” or “PTC” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time-to-time during the Term or any successor or other provision providing for a federal tax credit determined by

reference to renewable electric energy produced from wind or other renewable energy resources for which the Seller is eligible as the owner of the Generating Facility.

113. “Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Generating Facility, 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 CAISO and Applicable Laws.

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

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs;
- b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
- c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements,

- operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
114. “Quarterly Statement” has the meaning set forth in Section 3.05(c).
115. “RAP ID” has the meaning set forth in Section 10.08.
116. “Renewable Energy Credit” has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.
117. “Resource Adequacy Benefits” means the rights and privileges attached to the Generating Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.
118. “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, with respect to maintaining an adequate amount of generating capacity as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Term.
119. “Resource Decline Factor” means a multiplier to be established by a mutually agreeable third party engineer (e.g., GeothermEx as of the Effective Date) on or before the commencement of the third Term Year, and re-determined every five (5) years thereafter, to reflect the reduced electricity generating output expected from the Generating Facility as a result of changes in the condition of the geothermal resource associated with the Site.
120. “RPS Legislation” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
121. “S&P” means the Standard & Poor’s Rating Group.
122. “SCE” has the meaning set forth in the Preamble.

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123. “Schedule,” “Scheduled” or “Scheduling” means the actions of SCE or Seller of notifying and confirming to each other, the CAISO or the Transmission Provider, as appropriate, the quantity of electric energy being delivered by Seller to SCE at the Delivery Point on any given day, hour or relevant period.
124. “Scheduled Amounts” means the quantity, expressed in MWh, of electric energy from the Generating Facility that Seller confirms to the Transmission Provider is available for delivery, and that the Transmission Provider identifies as available to SCE on any given day, hour, or relevant period at the Delivery Point.
125. “Security Interests” has the meaning set forth in Section 8.03.
126. “Seller” has the meaning set forth in the Preamble.
127. “Seller’s Actual Revenue” has the meaning set forth in Exhibit P.
128. “Seller’s Adjusted Revenue” has the meaning set forth in Exhibit P.
129. “Seller’s Annual Energy Delivery Obligation” has the meaning set forth in Section 3.05(a)(i).
130. “Settlement Interval” means a sixty (60) minute time interval beginning on any hour and ending on the next hour (e.g. 12:00 to 01:00, 01:00 to 02:00, etc.).
131. “Simple Interest Payment” means a dollar amount calculated by multiplying the:
 - a) Dollar amount on which the Simple Interest Payment is based; times
 - b) Federal Funds Effective Rate or Interest Rate as applicable; times
 - c) The result of dividing the number of days in the calculation period by 360.
132. “Site” means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B or as adjusted in accordance with Section 3.08 and the geothermal resource directly underlying such real property or exploitable pursuant to the express terms of any Lease or other instrument relied upon by Seller to establish Site Control.
133. “Site Control” has the meaning set forth in Section 3.07(a).
134. “Startup Deadline” means the date set forth in Section 1.02 by which Seller must have achieved Initial Operation as set forth in Section 2.03, subject to extension as provided in this Agreement.
135. “Supplemental Lost Output” has the meaning set forth in Section 3.19.

136. “Supplemental Lost Output Report” has the meaning set forth in Section 3.19.
137. “Tangible Net Worth” means an entity’s total assets minus total liabilities and intangible assets, as set forth on the applicable balance sheet prepared in accordance with GAAP.
138. “Term” has the meaning used in Section 1.04.
139. “Term Year” means a twelve (12) month period beginning on the first day of the calendar month following the Firm Operation Date and each successive twelve (12) month period thereafter.
140. “Termination Payment” has the meaning set forth in Section 6.03.
141. “TOD Period(s)” means the time of delivery period(s) set forth in Exhibit K.
142. “TOD Period Energy Payment” means a portion of an Energy Payment based upon the time of delivery of Product and calculated in accordance with the formula set forth in Section 4.02(a).
143. “Transmission Provider” means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point. As of the Effective Date, the Transmission Provider is the Imperial Irrigation District.
144. “Unincluded Capacity” has the meaning set forth in Section 3.04(e).
145. “WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
146. “Web Client” shall have the meaning set forth in Section 3.13.

*** End of EXHIBIT A ***

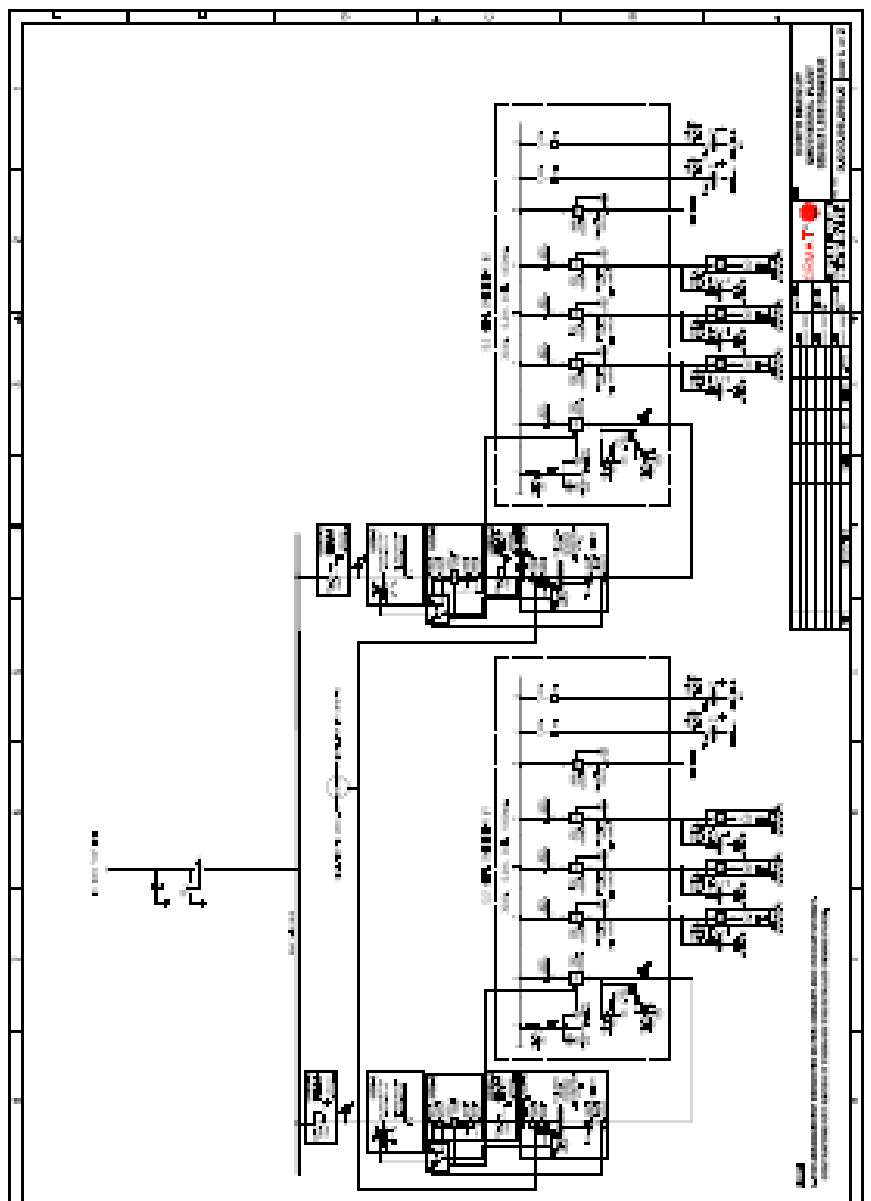
EXHIBIT B

Generating Facility and Site Description

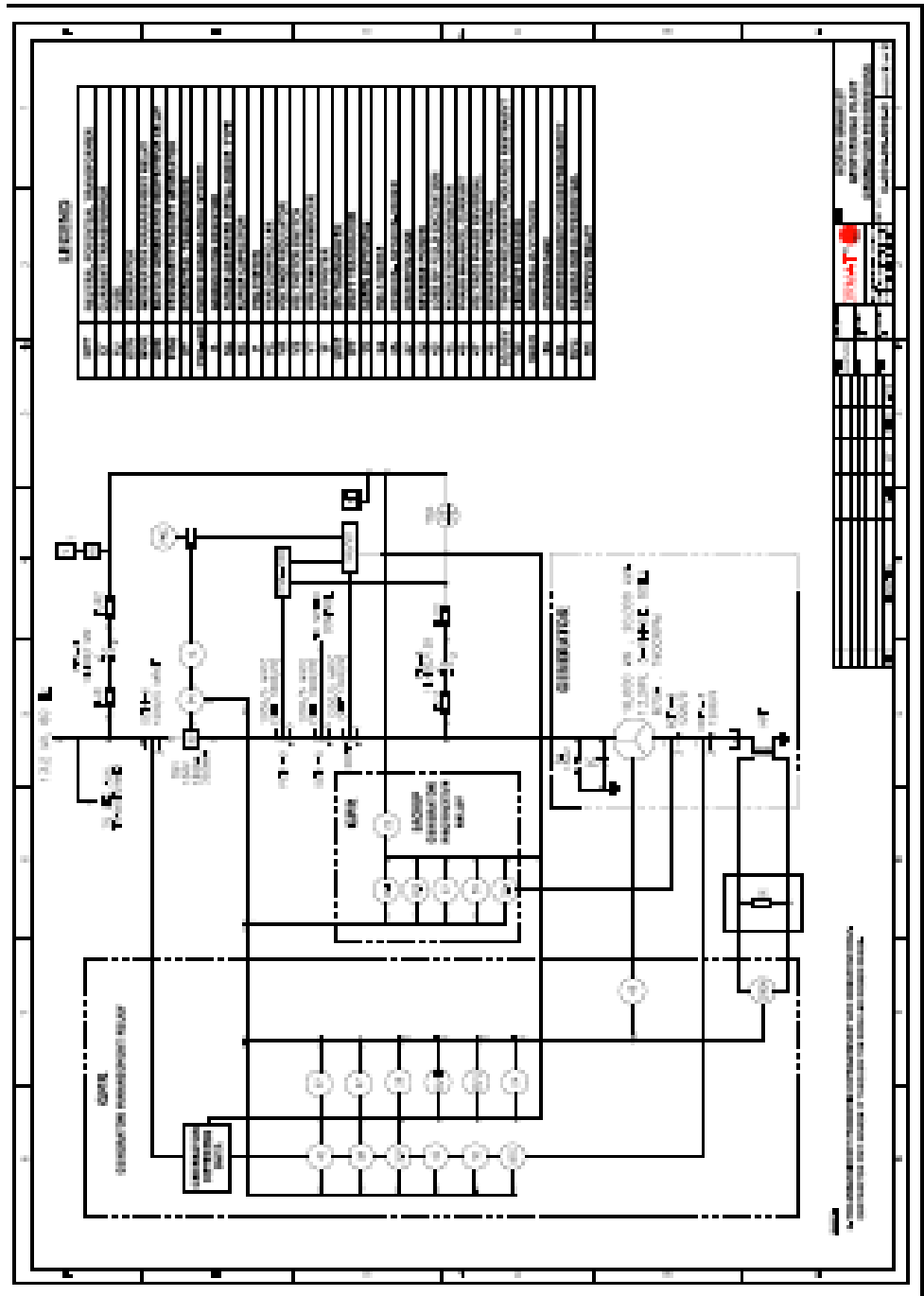
The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT B
Generating Facility And Site Description

1. Generating Facility Description.

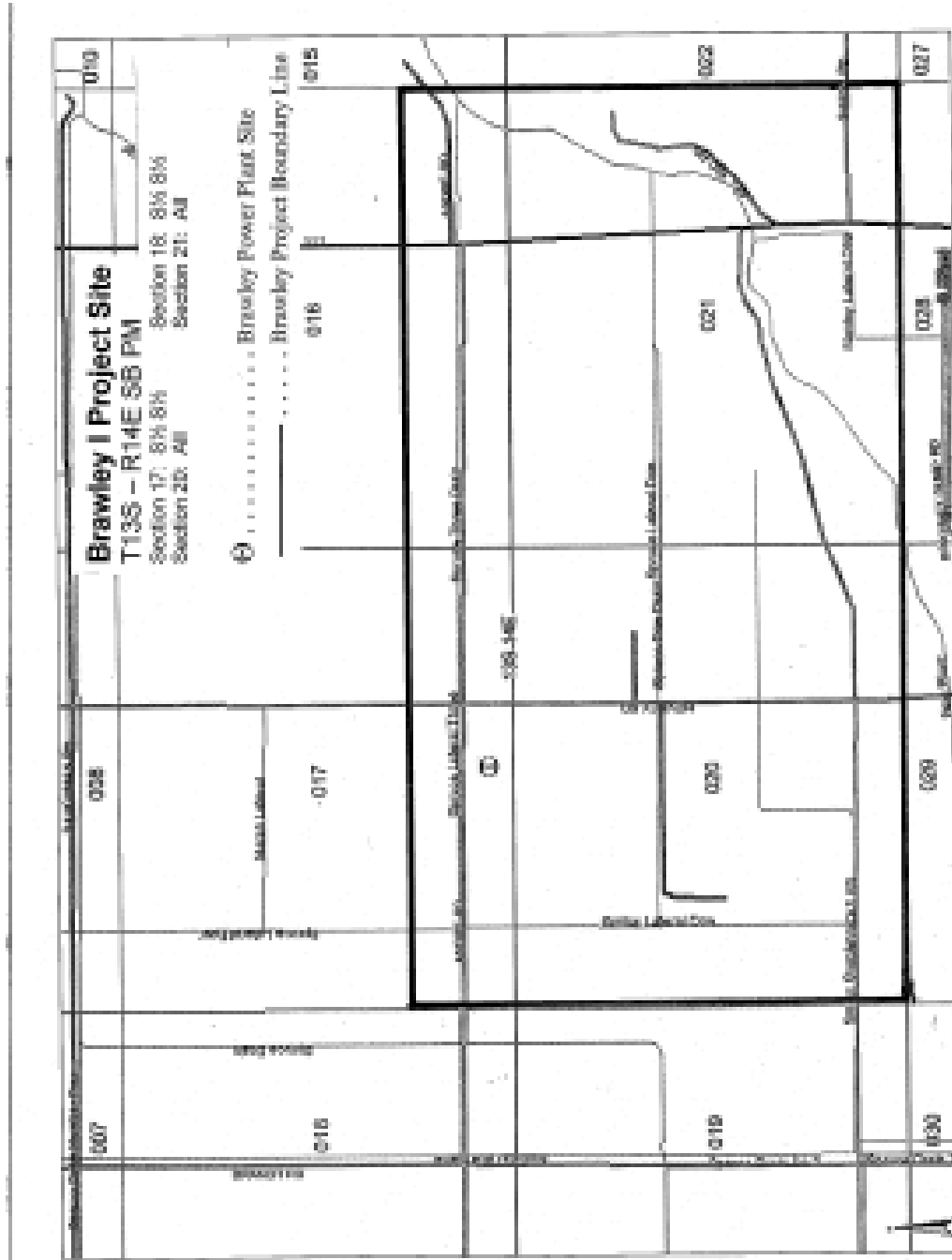


The contents of this document are subject to restrictions on disclosure as set forth herein.



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2. Site Description.



*** End of EXHIBIT B ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT C
Notice List

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT C

Notice List

ORNI 18, LLC (“Seller”)	SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”)
All Notices are deemed provided in accordance with Section 10.08 if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address or facsimile number provided below:
Contract Sponsor: Attn: Asset Manager Street: 6225 Neil Rd., Suite 300 City: Reno, Nevada 89511 Phone: (775) 356-9029 Facsimile: (775) 356-9039	Contract Sponsor: Attn: Stuart Hemphill Director, Renewable and Alternative Power Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-9594 Facsimile: (626) 302-1103
Reference Numbers: Duns: 92-931-5661 Federal Tax ID Number: 88-0278853	Reference Numbers: Duns: 006900818 Federal Tax ID Number: 95-1240335
Contract Administration: Attn: Asset Manager Phone: (775) 356-9029 Facsimile: (775) 356-9039	Contract Administration: Attn: Michele Walker Phone: (626) 302-8908 Facsimile: (626) 302-1103
Scheduling: Attn: Control Room Phone: (760) 353-8200 Facsimile: (760) 353-9189	Generation Operations Center: Phone: (626) 307-3285 (< 72 hours notice) Phone: (626) 307-3400 (> 72 hours notice)

ORNI 18, LLC (“Seller”)	SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”)
<p>Day-Ahead Scheduling: <u>Manager.</u> Attn: General Manager Phone: (760) 353-8200 Facsimile: (760) 353-9189</p> <p><u>Scheduling Desk.</u> Phone: (760) 353-8200 Fax: (760) 353-9189 Email: dpeavey@ormat.com</p>	<p>Day-Ahead Scheduling: <u>Manager.</u> Attn: Tracy Bibb Manager of Day-Ahead Operations Phone: (626) 302-3239 Facsimile: (626) 307-4413 Email: tracy.bibb@SCE.com</p> <p><u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 307-4413 Email: PreSched@SCE.com</p>
<p>Real-Time Forecasting: <u>Manager.</u> Attn: General Manager Phone: (760) 353-8200 Facsimile: (760) 353-9189</p> <p><u>Scheduling Desk.</u> Phone: (760) 353-8200 Fax: (760) 353-9189 Email: dpeavey@ormat.com</p>	<p>Real-Time Scheduling: <u>Manager.</u> Attn: John Pespisa Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 307-4416 Email: john.pespisa@SCE.com</p> <p><u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 307-4416 Email: RealTime@SCE.com</p>
<p>Payment Statements: Attn: Asset Manager Phone: (775) 356 9029 Facsimile: (775) 356 9039</p>	<p>Payment Statements: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-1102 Email: selene.willis@SCE.com</p>
<p>Payments: Attn: Asset Manager Phone: (775) 356 9029 Facsimile: (775) 356 9039</p>	<p>Payments: Attn: Cindy Shindle Phone: (626) 302-9272 Facsimile: (626) 302-1102 Email: cindy.shindle@SCE.com</p>

The contents of this document are subject to restrictions on disclosure as set forth herein.

<p>ORNI 18, LLC ("Seller")</p>	<p>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>Wire Transfer: BNK: Union Bank of California ABA: [REDACTED] ACCT: [REDACTED]</p>	<p>Wire Transfer: BNK: JP Morgan Chase Bank ABA: [REDACTED] ACCT: [REDACTED]</p>
<p>Credit and Collections: Attn: Asset Manager Phone: (775) 356 9029 Facsimile: (775) 356 9039</p>	<p>Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302-3150 Facsimile: (626) 302-2517</p>
<p>With additional Notices of an Event of Default or Potential Event of Default to: Attn: Asset Manager Phone: (775) 356 9029 Facsimile: (775) 356 9039</p>	<p>With additional Notices of an Event of Default or Potential Event of Default to: Attn: J. Eric Isken Manager SCE Law Department Power Procurement Section Phone: (626) 302-3141 Facsimile: (626) 302-1904 Email: j.eric.isken@SCE.com</p>
<p>Guarantor: N/A Attn: Phone: Facsimile: Email:</p>	<p>CAISO Charges, CAISO Sanctions and SCE Penalties: Attn: Selene Willis Phone: (626) 302-3329 Facsimile: (626) 302-1102 Email: selene.willis@SCE.com</p>
<p>Lender: N/A Attn: Phone: Facsimile: Email:</p>	

*** End of EXHIBIT C ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT D*Forecasting and Scheduling Requirements and Procedures*1. Introduction.

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

- (a) Comply with CAISO Tariff or Transmission Provider tariff changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of SCE, Seller, the Transmission Provider and the CAISO, including but not limited to, automated forecast and outage submissions.

2. Seller's Forecasting Requirements.

- (a) No later than thirty (30) days prior to Initial Operation, Seller shall provide SCE with a 30-day, non-binding hourly Energy Forecast, in MWh, for the thirty day (30) period commencing on Initial Operation using the Web Client.

If, after submitting the Energy Forecast pursuant to this Section 2(a), Seller learns that Initial Operation will occur on a date and time other than that reflected on the Energy Forecast, Seller will provide an updated Energy Forecast reflecting the new Initial Operation date at the earliest practicable time but no later than 5:00 p.m. Pacific Prevailing Time ("PPT") on the Wednesday prior to the new Initial Operation date, if Seller has learned of the new Initial Operation Date by that time, but in no event later than three (3) Business Days prior to the new Initial Operation date.

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

- (b) The Energy Forecast, and any updated Energy Forecasts provided pursuant to this Section 2, shall:

Limit hour-to-hour forecast changes to no less than two hundred fifty (250) kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour forecast changes when the Web Client is available.

The contents of this document are subject to restrictions on disclosure as set forth herein.

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

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

- (iv) The beginning date and time of the event resulting in the availability change;
- (v) The expected ending date and time of the event;
- (vi) The expected generation, in MW; and
- (vii) Any other information required by the CAISO as communicated to Seller by SCE.

3. Energy Scheduling.

The Parties will provide Schedules at the Delivery Point, as specified below:

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (i) Seller shall be responsible for submitting any Schedules or performing any other actions required by the Transmission Provider to deliver energy to the Delivery Point.
- (ii) As between Seller and SCE, Seller shall be responsible for ensuring that the Transmission Provider communicates Seller's Schedules to SCE in accordance with Transmission Provider's and SCE's prevailing Scheduling practices.
- (iii) SCE shall be responsible for submitting any Schedules or performing any other actions required by the CAISO to import energy from the Delivery Point into the CAISO Control Area.

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

EXHIBIT E

Payment Adjustments for Scheduling Deviations by Seller

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT E*Payment Adjustments for Scheduling Deviations by Seller*

In accordance with the provisions of Section 4.02(b), if at any time, SCE reasonably determines (and provides Notice to Seller) that it is not permitted to count towards its RPS requirements Scheduled Amounts that are not also Delivered Amounts, *then* the procedures and formulas set forth below shall apply. If and to the extent that SCE has not provided the Notice specified above, then the provisions of clauses (1) and (2) below shall not apply and there shall be no payment adjustment under Section 4.02(b).

(1) Make-up.

In a given Term Year, Seller shall be permitted to mitigate any difference between the Scheduled Amounts and Delivered Amounts in such Term Year by providing Green Attributes that qualify towards SCE's RPS requirements under the RPS Legislation from any other source, including, if permitted by the rules and regulations of the Transmission Provider, by providing Scheduled Amounts that are less than the Delivered Amounts (any such additional Green Attributes that qualify towards SCE's RPS requirements under the RPS Legislation are referred to as "Make Up Product"). Any such Make Up Product shall be added to the Delivered Amounts for the purposes of determining compliance with Section 4.02(b) and implementation of this Exhibit E.

(2) Payment Adjustment.

If, in respect of any Term Year, after adding any Make Up Product provided under clause (1) above, the Scheduled Amounts exceed Delivered Amounts by more than five percent (5%), then Seller shall pay to SCE an amount equal to the positive difference, if any, between the Contract Price and the weighted average Market Price during the relevant Term Year multiplied by the amount equal to the difference between the Scheduled Amounts and the Delivered Amounts during such Term Year.

*** End of EXHIBIT E ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT F

Energy Replacement Damage Amount

EXHIBIT F-1*Energy Replacement Damage Amount*

In accordance with the provisions of Section 3.05, 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.
3. In no event shall SCE pay an Energy Replacement Damage Amount.

*** End of EXHIBIT F ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT G

Seller's Milestone Schedule

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT G*Seller's Milestone Schedule*

<i>No.</i>	<i>Exhibit G Dates</i>	<i>Milestones</i>
1	June 2007	Submits interconnection application.
2	May 2007	Files any land applications.
3	August 2007	Files Major Permit application(s).
4	Nov. 2007	Files a CEC Certification and Verification application.
5	Dec. 2007	Receives a completed System Impact Study.
6	March 2008	Obtains control of all lands and rights-of-way comprising the Site.
7	April 2008	Receives a completed interconnection Facility Study.
8	October 2008	Executes a Transmission Owner Tariff and/or applicable service agreement.
9	Dec. 2008	Receives FERC acceptance of Interconnection Agreement and transmission agreement(s).
10	April 2008	Receives all Major Permits.
11	June 2008	Receives CEC Certification and Verification.
12	May 2008	Executes an Engineering, Procurement and Construction ("EPC") contract.
13	Dec. 2008	Completes Financing.
14	July 2008	Begins construction of the Generating Facility.
15	Sept. 2009	Begins startup activities.
16	Nov. 2009	Achieves Initial Operation.
17	Dec. 2009	Demonstrates the Contract Capacity.

*** End of EXHIBIT G ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT H

Milestone Progress Reporting Form

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT H*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. The report shall be sent via email in the form of a single Adobe Acrobat file or facsimile to SCE's Contract Administrator, as noted in Exhibit C, on the fifth (5th) Business Day after each month.

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

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 B.
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.

The contents of this document are subject to restrictions on disclosure as set forth herein.

14. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Generating Facility, Transmission Provider's electric system and all other interconnection utility services.

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

EXHIBIT I

Form of Guaranty Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT I

Form of Guaranty Agreement

1. Guaranty.

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

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

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

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

Guarantor shall promptly, but in no event less than ten (10) Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

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

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

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

2. Guaranty Limit.

Subject only to Paragraph 12, notwithstanding any other term or provision hereof to the contrary, the liability of Guarantor hereunder shall not exceed \$_____ in the

aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute.

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

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

The contents of this document are subject to restrictions on disclosure as set forth herein.

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

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the date on which the Obligations have been performed or paid in full or
- (b) Notwithstanding the provisions of Paragraph 4(a) hereof, this Guaranty shall be reinstated if at any time following the termination of this Guaranty under

The contents of this document are subject to restrictions on disclosure as set forth herein.

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

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

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

5. Bankruptcy; Post-Petition Interest.

- (a) The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
- (b) Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations because it is the intention of Guarantor and Beneficiary that the Obligations which are guaranteed by Guarantor pursuant to this Guaranty should be determined without regard to any rule of law or order which may relieve Principal of any portion of such Obligations.

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

6. 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 postpones any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, reimbursement, exoneration, contribution, indemnification or any right to participate in any claim or remedy of the Beneficiary against Principal or any collateral that the Beneficiary now has or hereafter acquires, until all of the Obligations shall have been irrevocably paid to the Beneficiary in full.

If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection therewith) and shall promptly pay such amount to Beneficiary.

Any rights of subrogation Guarantor may have against Principal or against such collateral or security shall be junior and subordinate to any rights Beneficiary may have against Principal and to all right, title and interest Beneficiary may have in such collateral or security.

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

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

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

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

Guarantor acknowledges and agrees that Beneficiary may also bid at any such sale and if such collateral is sold to Beneficiary in whole or partial satisfaction of

Principal's obligations under the Agreement, including the Obligations (or any portion thereof), Guarantor shall not have any further right or interest with respect thereto.

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

7. Waivers of Guarantor.

To the fullest extent permitted by law;

- (a) Guarantor waives the benefit of any statute of limitations relating to the Obligations.
- (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; and
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code.

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

Without limiting the generality of the waiver in the first sentence of this Subparagraph (c), Guarantor desires and intends to, and hereby does, waive each and all of the rights and defenses described below in this Subparagraph (c).

- (i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:
 - a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
 - b. If the creditor forecloses on any real property collateral pledged by the debtor:

- (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
- (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason;
- (f) Guarantor waives any defense based upon any statute or rule of law that provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;
- (g) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
- (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of Guarantor's obligations hereunder;

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (i) Guarantor waives any rights to setoffs, recoupments or counterclaims against Beneficiary;
 - (j) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - (k) Guarantor waives any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guaranty;
 - (l) Guarantor waives any rights or defenses that Guarantor may have under Sections 2899 and 3433 of the California Civil Code;
 - (m) Guarantor waives any defense based upon Beneficiary's election, in any proceeding instituted under the United States Bankruptcy Code, as amended, of the application of Section 1111(b)(2) of the United States Bankruptcy Code, as amended, or any successor statute; and
 - (n) Guarantor waives any defense based upon any borrowing or any grant of a security interest under Section 364 of the United States Bankruptcy Code, as amended.
8. No Waiver of Rights by Beneficiary.

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

9. 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, and permitted assigns of the Obligations, 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 that is an assignee of the Beneficiary's right in respect of the Obligations without the prior consent of the Guarantor; *provided, however*, that no such assignment shall be binding upon the Guarantor and any performance hereunder made to the Beneficiary shall be effective 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.

10. Representations of Guarantor.

Guarantor hereby represents and warrants that:

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

11. Attorneys' Fees.

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

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

The contents of this document are subject to restrictions on disclosure as set forth herein.

12. Governing Law.

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

13. Construction.

All parties to this Guaranty are represented by legal counsel.

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

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

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

14. 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.

15. 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.

16. Notices.

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

Beneficiary.

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770
Attn: Director, Renewable and Alternative Power
Phone: (626) 302-

Facsimile: (626) 302-

with a copy to:

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770
Attn: Director, Risk Control
Phone: (626) 302-

Facsimile: (626) 302-

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: _____

*** End of EXHIBIT I ***

EXHIBIT J

Non-Disclosure Agreement

The contents of this document are subject to restrictions on disclosure as set forth herein.

06-006

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

Ormat Nevada, Inc. on behalf of Newsub

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and Ormat Nevada, Inc. hereby enter into this Non-Disclosure Agreement ("Agreement").

SCE and Ormat Nevada Inc. 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 July 14, 2006, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. Ormat Nevada, Inc. desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Ormat Nevada, Inc. to SCE as part of Ormat Nevada, Inc. submission of a proposal in response to the PFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to Ormat Nevada, Inc. as part of discussions or negotiations with Ormat Nevada, Inc. concerning Ormat Nevada, Inc. 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.

The contents of this document are subject to restrictions on disclosure as set forth herein.

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

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

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 66-C, or by appropriate application to or agreement with, the PRG and CEC, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into.

4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:
 - 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 Ormat Nevada, Inc. can demonstrate in writing was already known to SCE or Ormat Nevada, Inc. prior to the effective date of this Agreement;
 - c. Information which comes to SCE or Ormat Nevada, Inc. from a *bona fide* third party source not under an obligation of confidentiality;

*Imperial Geothermal Complex, SCE 2006 Renewable RFP Proposal
The contents of this document are subject to restrictions on disclosure as set forth herein*

The contents of this document are subject to restrictions on disclosure as set forth herein.

- d. Information which is independently developed by SCE or Ormat Nevada, Inc. without use of or reference to Confidential Information or information containing Confidential Information; or
- e. The fact that Ormat Nevada Inc. submitted a Proposal in response to the RFP and/or is declared a willing Seller pursuant to the RFP.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek and injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the party may be entitled by law or equity.
6. Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

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

7. 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 Ormat Nevada, Inc. 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
 - a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
 - b) 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
 - c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

*Imperial Geothermal Complex, SCE 2006 Renewable RFP Proposal
The contents of this document are subject to restrictions on disclosure as set forth herein*

The contents of this document are subject to restrictions on disclosure as set forth herein.

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
Attention: Director, ~~QF Resources~~ Renewable and Alternative Power
Telephone: (626) 302-~~1823~~ 9594
Facsimile: (626) 302-1103

If to Ormat Nevada Inc.
Ormat Nevada, Inc.
6225 Neil Road, Suite 300
Reno, Nevada 89511
Telephone: 775.356.9029
Facsimile: 775.823.5401

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.

*Imperial Geothermal Complex, SCE 2006 Renewable RFP Proposal
The contents of this document are subject to restrictions on disclosure as set forth herein*

The contents of this document are subject to restrictions on disclosure as set forth herein.

- 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.

**Ormat Nevada Inc. on behalf of
Newsub**

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a Delaware Corporation

a California corporation.

By:

By:

[Handwritten Signature]

[Handwritten Signature]

Stuart R. Hemphill
Director
Renewable and Alternative Power

Date: *September 21, 2006*

Date: October 19, 2006

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel

By: *[Handwritten Signature]*
Attorney
October 18, 2006

*Imperial Geothermal Complex, SCE 2006 Renewable RFP Proposal
The contents of this document are subject to restrictions on disclosure as set forth herein*

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

EXHIBIT K
Time of Delivery Periods
and
Energy Payment Allocation Factors

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT K
*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 and 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.	3.28
	Mid-Peak	Fixed Value.	1.28
	Off-Peak	Fixed Value.	0.67
Winter	Mid-Peak	Fixed Value.	1.02
	Off-Peak	Fixed Value.	0.82
	Super-Off-Peak	Fixed Value.	0.65

“Holiday” is defined as New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

When any Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

*** End of EXHIBIT K ***

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT L

Procedure for Partial or Full Return of Development Security

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT L*Procedure for Partial or Full Return of Development Security*1. Seller's Request for Development Security Refund.

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

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

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

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

3. Full or Partial Return of Development Security for Demonstrating Contract Capacity.

Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within thirty (30) days after Seller's Notice of request for Development Security refund pursuant to Item 1(b):

- (a) Retrieve interval data downloaded from the SCE Meter for the twelve (12) hour periods before and after the Demonstration Hour;
- (b) Complete a site visit to verify that the Generating Facility was developed in accordance with the Generating Facility and Site Description set forth in Exhibit B and to determine the Demonstrated Contract Capacity.
- (c) If the Demonstrated Contract Capacity as determined in Item 3(a) above is greater than or equal to the Contract Capacity,
then Seller shall qualify to receive a full return of the Development Security.
- (d) If the Demonstrated Contract Capacity as determined in Item 3(a) above is less than the Contract Capacity,

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then Seller shall qualify to receive a return of only a portion of the Development Security based upon the level of the Demonstrated Contract Capacity.

- (e) Based upon the information in Item 3(a), calculate the amount of Development Security refund due Seller pursuant to Sections 3.04(d) and 3.04(e).
- (f) Provide Notice to Seller of the amount of Development Security being returned pursuant to Item 3(d), the amount of Development Security forfeited, as applicable, and the reason(s) that a forfeiture of all or part of the Development Security is appropriate.
- (g) Return any Development Security due Seller if such Development Security was posted in the form of cash.
- (h) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Security is due Seller. If Seller is only entitled to a partial return of the Development Security SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Security forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

To the extent Seller has posted Development Security in accordance with Section 3.04 and Seller is entitled to a partial return of the Development Security, SCE shall return only a portion of the Development Security based upon the level of the Demonstrated Contract Capacity.

*** End of EXHIBIT L ***

EXHIBIT M

Seller's Estimate of Lost Output

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT M

Seller's Estimate Of Lost Output

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

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

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

1. Log of Lost Output Events.

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

2. Data Collection.

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

The worksheet shall be arranged with:

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

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

3. Generating Facility Monthly Profiles.

The contents of this document are subject to restrictions on disclosure as set forth herein.

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

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

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

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

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

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

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

4. Seller's Estimate of Lost Output.

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

The worksheet shall include:

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

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

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

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

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

*** End of EXHIBIT M ***

EXHIBIT N

Form of Letter of Credit

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT N
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as RAP ID# ____ (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 (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 Beneficiary by presentation in compliance on or prior to 5:00 p.m. California time, on or prior to the Expiration Date, with the following:

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

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

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

ATTACHMENT A
Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

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

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - A. An Event of Default, as defined in that certain Renewable Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the “Agreement”), with respect to the Applicant has occurred and is continuing.
 - B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
 - C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not

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provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

- []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date thereof (“Notice of Non-renewal”), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
- []E. The Beneficiary is entitled to retain the entire Development Security as a result of Applicant’s failure to achieve Initial Operation of the full Contract Capacity by the Startup Deadline or any extended Startup Deadline as provided in the Agreement, or the Agreement has terminated due to an Event of Default by Applicant prior to the Startup Deadline.
- []F. The Beneficiary is entitled to retain a portion of the Development Security 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 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

The contents of this document are subject to restrictions on disclosure as set forth herein.

By:

Name:

Title:

**** End of EXHIBIT N ****

EXHIBIT O

[Intentionally Deleted]

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

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT P

CAISO Change Cost Payment Calculation

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT P

CAISO Change Cost Payment Calculation

1. Introduction.

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

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

Where:

- (a) As used herein, “Seller’s Actual Revenue” means the total of payments and tax benefits received by Seller in any Term Year consisting of payments received by Seller during the Term Year pursuant to Article Four; and
- (b) As used herein, “Seller’s Adjusted Revenue” means the calculated amount of Seller’s revenue in any Term Year based on adjustments to Seller’s Actual Revenue, in order to measure the hypothetical amount of revenue that would have been realized by Seller during the Term Year using the CAISO’s methodology and procedures that would have applied either *as of the Effective Date* or *before* any Change in CAISO Tariff as compared to the CAISO’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} are described as follows:

- (a) Changes in CAISO Allocation of Transmission Congestion Impacting Scheduled Amounts.

A_{before} = Seller’s Adjusted Revenue based on calculating the adjustments to Seller’s Actual Revenue, either up or down, upon the occurrence of congestion on the transmission system, changes to Seller’s actual Scheduled Amounts during the Term Year that would result from applying the CAISO’s methodology and procedures in effect *immediately prior* to the first Change in CAISO Tariff

A_{after} = Seller’s Actual Revenue during the Term Year.

- (b) Changes in CAISO Tariff Impacting CAISO Charges.

B_{before} = This value shall be the calculated amount of CAISO Charges that would have been paid by Seller to SCE during the Term Year, determined by applying the CAISO’s methodology and procedures in effect immediately prior to the first Change in CAISO Tariff.

B_{after} = Actual amount of CAISO Charges paid by Seller to SCE during the Term Year.

3. Change Cost Payments.

- (a) Change Cost Payment to Seller.

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

CAISO CHANGE COST PAYMENT TO SELLER = $E - F$

Where:

E = CAISO Change Cost as calculated above.

F = CAISO Change Cost Threshold Amount as set forth in Section 1.08.

The contents of this document are subject to restrictions on disclosure as set forth herein.

(b) Change Cost Payment to SCE.

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

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

Where:

E = CAISO Change Cost as calculated above.

F = CAISO Change Cost Threshold Amount as set forth in Section 1.08.

*** End of EXHIBIT P***

EXHIBIT Q

[Intentionally Deleted]

**** End of EXHIBIT Q****

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT R

Seller's Financial Information for Consolidation

The contents of this document are subject to restrictions on disclosure as set forth herein.

EXHIBIT R*Seller's Financial Information for Consolidation*

If SCE provides Notice to Seller pursuant to Section 3.21, Seller and SCE agree that:

- (a) Within twenty (20) days following the end of each calendar quarter, Seller shall deliver to SCE:
 - (i) An unaudited condensed statement of income for the calendar quarter and year-to-date;
 - (ii) An unaudited condensed statement of cash flows for the calendar quarter and year-to-date;
 - (iii) An unaudited condensed balance sheet at the end of such calendar quarter; and
 - (iv) A completed quarterly disclosure checklist with supporting financial schedules necessary for SCE to prepare its quarterly filing with the United States Securities and Exchange Commission.

SCE will provide to Seller such checklist prior to the end of each quarter and include only items considered material to SCE.

Seller shall prepare its financial statements to be delivered under the terms of Section 3.21 and this Exhibit R in accordance with accounting principles generally accepted in the United States of America.

- (b) Promptly upon Notice from SCE, Seller shall allow SCE access to Seller's records and personnel, so that SCE's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for any such audit shall be borne by SCE.
- (c) SCE shall provide Notice to Seller if, in the sole discretion of SCE, Seller's internal controls of financial reporting (directly or indirectly, alone or in combination with other factors) would be considered material to SCE or its parent company's financial statements, financial condition or internal controls of financial reporting.

The contents of this document are subject to restrictions on disclosure as set forth herein.

- (d) Within thirty (30) days of Seller's receipt of Notice from SCE, Seller shall remediate any deficiency in Seller's internal controls of financial reporting identified by SCE during or as a result of the audits permitted under Section 3.21 and this Exhibit R.
- (e) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to SCE a Notice describing such occurrence in sufficient detail to permit SCE to make a Form 8-K filing with the United States Securities and Exchange Commission. Such occurrences include all reportable events on the then current Form 8-K that applies to SCE and its parent company at such time, including the following events:
 - (i) Acquisition or disposition of a material amount of assets;
 - (ii) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
 - (iii) Existence of material litigation; and
 - (iv) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent.
- (f) SCE shall treat Seller's financial statements or other financial information provided under the terms of Section 3.21 and this Exhibit R in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, for making regulatory, tax or other filings required by law in which SCE is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, to the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE's or any SCE parent company's financial statements and to those persons or entities who are entitled to receive confidential information as identified in Section 10.10.

The contents of this document are subject to restrictions on disclosure as set forth herein.

**** End of EXHIBIT R****

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