



RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

DESERT SUNLIGHT LLC

(RAP ID #5217)

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

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

DESERT SUNLIGHT LLC

(RAP ID #5217)

PREAMBLE

This Renewable Power Purchase and Sale Agreement, together with the exhibits and attachments (collectively, the “Agreement”) is made and effective as of the following date: August 17, 2009 (“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) **Desert Sunlight LLC** (“Seller”), a Delaware limited liability company, whose principal place of business is at 31302 Huntwood Avenue, Hayward, CA 94544.

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

- A. 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 as specified herein together with all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE; and
- B. 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: Desert Sunlight.
- (b) Location of Site: In the vicinity of Desert Center, Riverside County, California, as further described in Exhibit B.
- (c) Generating Facility description is located in Exhibit B.
- (d) Eligible Renewable Energy Resource Type: Photovoltaic solar.
- (e) Interconnection Point: The 230/500 kV substation that is to be built in the Devers-Palo Verde transmission corridor, to be sited and named by the Transmission Provider or CAISO at a later date. As of the Effective Date, the planned name for the substation is the Red Bluff Substation.
- (f) Delivery Point: The PNode assigned by the CAISO at the 500 kV side of Interconnection Point substation.
- (g) Contract Capacity: 250 MW, subject to reduction as expressly set forth in this Agreement.
 - (i) Build-Out of Contract Capacity.

Starting before Initial Synchronization and ending no later than the Commercial Operation Date, Seller will install the Generating Facility in Increments, in accordance with the procedure set forth in Section 3.13.

- (ii) Reduction in Contract Capacity.
 - (1) The Contract Capacity may be reduced as set forth in Section 3.04(e), 5.05(b) and 5.05(c).
 - (2) BLM Permit.
 - (a) Seller has elected to seek one permit (the “BLM Permit”) from the U.S. Bureau of Land Management (“BLM”) under BLM application number CACA #48649 for construction of 550 MW on BLM land, covering construction of both the Generating Facility and another separate solar generating facility to be owned by an Affiliate of Seller (“Other Seller”), located

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

in the vicinity of the Generating Facility and with a proposed capacity of 300 MW (“Other Facility”).

If, in spite of Seller’s good faith efforts to obtain the BLM Permit authorizing construction of a total of 550 MW, the final BLM Record of Decision issued in response to Seller’s application (“ROD”) covering the Generating Facility and Other Facility authorizes construction of less than 550 MW, then, by written Notice to SCE given within thirty (30) days of the date of the ROD, Seller shall have the right (but not the obligation) to reduce the Contract Capacity to an amount specified by Seller not less than the total number of MW authorized to be constructed in the ROD multiplied by 0.4545.

(b) Any Notice given by Seller to SCE in accordance with Section 1.01(g)(ii)(2)(a) must also include a revised Exhibit B describing the Generating Facility and the Site (including the finalized Site plan).

(c) Effect of Notice.

Effective five (5) Business Days after SCE’s receipt of Notice given in accordance with Section 1.01(g)(ii)(2)(a), the Contract Capacity will be deemed reduced to the amount specified in the Notice, subject to further reduction as set forth in 3.04(e); and

Within thirty (30) days of SCE’s receipt of Notice given in accordance with Section 1.01(g)(ii)(2)(a), SCE will return to Seller any Development Security held by SCE as of the date of the Notice in excess of that required under Section 3.04, based upon the level of Contract Capacity specified in the Notice. This reduction will not by itself constitute a breach of this Agreement.

(3) Investment Tax Credit.

(a) If the Commercial Operation Date is extended beyond December 31, 2016, but as of December 31, 2016, the ITC Expiration Date has not been extended to at least December 31, 2017, then, by written Notice to SCE given by January 31, 2017, Seller shall have the right

(but not the obligation) to reduce the Contract Capacity to the Generating Facility Capacity that has been installed as of December 31, 2016, and subsequently demonstrated pursuant to Exhibit R so long as:

Any Notice given by Seller to SCE in accordance with this Section 1.01(g)(ii)(3)(a) specifies the Claimed Capacity as of December 31, 2016, and includes a revised Exhibit B describing the Generating Facility and the Site (including the finalized Site plan); and

Seller establishes to SCE's reasonable satisfaction that Seller has made a good faith effort to fully install and demonstrate the full Contract Capacity by December 31, 2016 and the failure to do so is not due to any action or inaction on Seller's part.

(b) Effect of Notice.

Effective five (5) Business Days after SCE's receipt of Notice given in accordance with Section 1.01(g)(ii)(3)(a), the Contract Capacity will be deemed reduced to the amount specified in the Notice, subject to further reduction as set forth in 3.04(e); and

Within thirty (30) days of SCE's receipt of Notice given in accordance with Section 1.01(g)(ii)(3)(a), SCE will return to Seller any Development Security held by SCE as of the date of the Notice in excess of that required under Section 3.04, based upon the level of Contract Capacity specified in the Notice. This reduction will not by itself constitute a breach of this Agreement.

(4) Property Tax.

- (a) If the Commercial Operation Date has been extended beyond December 31, 2016, but as of December 31, 2016, the Solar Property Tax Exemption has not been extended to cover solar generation installed through December 31, 2017, then, by written Notice to SCE given by January 31, 2017, Seller shall have the right (but not the obligation) to reduce the Contract Capacity to an amount specified by Seller not less than the Generating Facility Capacity that has been installed as

of December 31, 2016, and subsequently demonstrated pursuant to Exhibit R so long as:

Any Notice given by Seller to SCE in accordance with this Section 1.01(g)(ii)(4)(a) specifies the Claimed Capacity as of December 31, 2016, and includes a revised Exhibit B describing the Generating Facility and the Site (including the finalized Site plan); and

Seller establishes to SCE's reasonable satisfaction that Seller has made a good faith effort to fully install and demonstrate the full Contract Capacity by December 31, 2016 and the failure to do so is not due to any action or inaction on Seller's part.

(b) Effect of Notice.

Effective five (5) Business Days after SCE's receipt of Notice given in accordance with Section 1.01(g)(ii)(4)(a), the Contract Capacity will be deemed reduced to the amount specified in the Notice, subject to further reduction as set forth in Section 3.04(e); and

Within thirty (30) days of SCE's receipt of Notice given in accordance with Section 1.01(g)(ii)(4)(a), SCE will return to Seller any Development Security held by SCE as of the date of the Notice in excess of that required under Section 3.04, based upon the level of Contract Capacity specified in the Notice. This reduction will not by itself constitute a breach of this Agreement.

- (5) If Seller elects to reduce the Contract Capacity pursuant to paragraph (2), (3) or (4) of this Section 1.01(g)(ii) then, the amount of any such reduced electric generating capacity shall be deemed to be "Unincluded Capacity" and shall be subject to the restrictions set forth in Section 3.04(f) from the date of Seller's election to reduce the Contract Capacity until two (2) years after the Final Test as set forth in Exhibit L.

(h) Forecasted Annual Net Energy Production.

The forecasted annual net energy production for Term Year 1 shall be 571,000 MWh.

- (i) 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

$$= A \times B$$

Where:

A = The Installed DC Rating, in kW_{PDC}.

B = Annual Energy Yield Factor in kWh of AC energy per kW_{PDC} of DC power.

<u>Term Year</u>	<u>Annual Energy Yield Factor</u>
1	1,903.333
2	1,888.107
3	1,873.002
4	1,858.018
5	1,843.154
6	1,828.408
7	1,813.781
8	1,799.271
9	1,784.877
10	1,770.598
11	1,756.433
12	1,742.381
13	1,728.442
14	1,714.615
15	1,700.898
16	1,687.291
17	1,673.792

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

18	1,660.402
19	1,647.119
20	1,633.942

1.02 Forecasted Initial Synchronization Date.

The Forecasted Initial Synchronization Date is March 31, 2013.

1.03 Forecasted Commercial Operation Date.

The Forecasted Commercial Operation Date is April 30, 2015.

1.04 Startup Deadline.

The “Startup Deadline” means the date by which Seller is obligated to achieve Commercial Operation hereunder, and shall be that certain date that is the earliest of:

- (a) Twenty-five (25) months following the Initial Synchronization Date;
- (b) One Hundred (100) days following the date that Seller receives Notice from SCE acknowledging that Seller has achieved a Demonstrated Capacity equal to or in excess of ninety percent (90%) of the Contract Capacity; and
- (c) August 1, 2017;

provided that such certain date shall be extended as provided in Sections 3.04(c)(ii) or 5.03; and provided further that, notwithstanding anything in this Agreement to the contrary, in no event shall the Startup Deadline be later than December 31, 2017.

1.05 Firm Operation Date.

The Firm Operation Date shall be the date that is:

- (a) Thirty (30) days after the Commercial Operation Date, plus any additional days for Force Majeure as provided in Section 5.04; or
- (b) Agreed to in a writing signed by both Parties.

1.06 Term.

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

1.07 Energy Price.

The Energy Price will be determined in accordance with Exhibit P.

1.08 Performance Assurance Amount.

The Performance Assurance Amount will be calculated in accordance with Exhibit P.

1.09 Seller's Guarantor.

- (a) Guarantor: No Guarantor as of the Effective Date.
- (b) Guaranty Amount: If a Guaranty Agreement is executed, the amount thereof shall be equal to the amount of Performance Assurance required under Section 1.08.
- (c) Cross Default Amount: If a Guaranty Agreement is executed, the Cross Default Amount shall be determined at that time by mutual agreement of the Parties acting in good faith.

1.10 Seller's Debt to Equity Ratio.

Seller's Debt Percentage: 80%

Seller's Equity Percentage: 20%

1.11 CAISO Queue Position.

Seller's CAISO Queue Positions are 146 (comprising 150 MW) and 100 MW of 147.

*** End of ARTICLE ONE ***

ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date.

This Agreement is 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.

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 and Transmission Service Applications.

Seller shall neither withdraw the CAISO Queue Positions that are to be used for the Generating Facility and this Agreement, nor assign or transfer those CAISO Queue Positions to any entity or for the benefit of any other power purchase and sale arrangement, without the prior written consent of SCE if such assignment or transfer would preclude the use of the CAISO Queue Positions for the full Contract Capacity of the Generating Facility; *provided*, only 100 MW associated with CAISO Queue Position 147 shall be subject to the restrictions on assignment, use or transfer set forth in this Section 2.02(b).

Seller shall apply for and exercise diligence in obtaining a FERC-accepted interconnection agreement to interconnect the Generating Facility to the Transmission Provider's electric system and any transmission, distribution or other service agreement required to transmit electric energy on the Transmission Provider's electric system, solely to the extent required in accordance with the CAISO Tariff and SCE's tariffs.

- (c) Seller's Regulatory and Governmental Filings.
 - (i) Within one hundred eighty (180) days after the Effective Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility.
 - (ii) Within one hundred eighty (180) days after the Effective Date, Seller shall file all applications or other appropriate requests with the proper authorities for the BLM Permit.
 - (iii) Seller shall expeditiously seek CEC Certification and Verification and all other Material 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 Commercial Operation (as defined below).

(b) Commercial Operation.

Commercial operation of the Generating Facility ("Commercial Operation") shall be deemed to have been achieved on the date selected by Seller (the "Commercial Operation Date") to begin the Term of this Agreement.

Seller shall provide at least three (3) Business Days advance Notice to SCE of the Commercial Operation Date.

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

- (i) SCE shall have obtained or waived CPUC Approval, as provided herein;
- (ii) Seller shall have achieved Initial Synchronization;
- (iii) Seller shall:
 - (1) Have completed the installation of the Generating Facility in accordance with Prudent Electrical Practices and the other requirements of this Agreement; *provided*, for purposes of interpreting this Section 2.03(b)(iii)(1), and subject to (a) Seller's obligation to make a good faith effort to fully install and demonstrate the full Contract Capacity and (b) the rights and remedies of the Parties set forth in Section 3.04(e), Seller's

obligation to have completed the installation of the Generating Facility shall not be deemed to require Seller to install the full Contract Capacity in order to achieve Commercial Operation;

- (2) Have received from its primary equipment vendors all equipment warranties for the Generating Facility equipment and those warranties are in force; and
- (3) Be prepared to perform (and to continue to perform) its energy delivery and related obligations in accordance with the requirements hereof;
- (iv) Seller shall have posted with SCE the Performance Assurance required under Section 8.02 in the amount set forth in Section 1.08 and Exhibit P; and
- (v) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider's electric system.

2.04 Termination Rights of the Parties.

If either Party exercises a termination right, as set forth in Sections 2.04(a), 2.04(b), 2.04(c) or 5.05(a), a Termination Payment will be calculated by the non-terminating Party in accordance with Section 6.03, the Forward Settlement Amount shall be zero dollars (\$0), and Seller shall be entitled to a return of any Development Security or Performance Assurance provided to SCE except for Development Security or Performance Assurance required to satisfy any Termination Payment calculated in accordance with Section 6.03 payable to SCE.

(a) Termination Rights of Both Parties.

- (i) 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 or waived by SCE in its sole discretion within three hundred sixty five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety fifth (395th) day after SCE files the request for CPUC Approval.
- (ii) 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 CEC Certification and Verification has 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 (19th) month after the Effective Date.

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

- (iii) 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 if Seller has not obtained Permit Approval of the BLM Permit within thirty-six (36) months after the Effective Date and a Notice of termination is given on or before the end of the thirty-seventh (37th) month after the Effective Date.

(b) Termination Rights of Seller.

Seller shall have the right to terminate this Agreement:

- (i) If the interconnection facilities, transmission or distribution upgrades or new transmission or distribution facilities described in Seller's LGIA and required to interconnect the Generating Facility have not been constructed, commissioned and placed into operation by the CAISO or the Transmission Provider within one hundred eighty (180) days of the timeframe set forth in Seller's LGIA (the "Interconnection Deadline") through no fault of Seller, and Seller has completed its obligations, taken the actions and met its deadlines to ensure timely construction, commission and operation of these facilities, and Notice of termination is given on or before thirty (30) days after the Interconnection Deadline;
- (ii) On Notice, which will be effective five (5) Business Days after Seller gives it, if Seller gives the Notice within ninety (90) days after the day that Seller receives a tendered LGIA(s) from the Transmission Provider for CAISO Queue Position 146 and 147 and the Total Projects Interconnection Costs exceed Twenty-Two Million dollars (\$22,000,000); *provided*, together with any such Notice, Seller shall provide an opinion from a nationally recognized engineering firm substantiating the reasonably anticipated construction costs (not including financing costs) for the Gen-Tie Line and document that the only changes to the design and construction standards for the Gen-Tie Line from those Seller planned for as of the Effective Date, if any, are changes required by SCE, BLM or other lead permitting agency.
- (iii) On Notice, which will be effective five (5) Business Days after Seller gives it, if Seller gives the Notice within ninety (90) days after the day that Seller receives a tendered LGIA(s) from the Transmission Provider for CAISO Queue Position 146 and 147 and such tendered LGIA(s) establishes that the Total Projects Network Upgrades Costs, less any amount of the Network Upgrades (as defined in the LGIA(s) that SCE has committed to pre-fund, exceed Forty-Five Million dollars (\$45,000,000).

(iv) On Notice, which will be effective five (5) Business Days after Seller gives it, if Seller gives the Notice within sixty (60) days after the day that Seller is tendered an LGIA from the Transmission Provider and the timeframe set forth in the tendered LGIA contains information that indicates that the interconnection facilities and transmission facilities required for Seller have a reasonable likelihood of not being placed in service before July 1, 2015.

(c) Termination Rights of SCE.

SCE shall have the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after SCE gives it, if SCE gives the Notice within sixty (60) days of the date that Seller provides to SCE the results of any Interconnection Study by the CAISO or the Transmission Provider for the Generating Facility and the results of the latest of such studies performed as of the termination Notice reflect that the total cost of transmission upgrades or new transmission facilities for the Generating Facility 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 Fifty Million dollars (\$50,000,000).

(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 1.06, 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) The obligation of Seller to pay the Energy Replacement Damage Amount under Section 3.05(b);

- (ii) The 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 limitations of liabilities under Article Seven;
 - (viii) The obligation of SCE to make Startup Payments during the Startup Period and Energy Payments for Metered Amounts prior to termination under Section 4.02;
 - (ix) The obligation of Seller to make payments for CAISO Sanctions and any SCE Penalty that are attributable to Seller's actions or omissions during the Startup Period and the Term pursuant to Section 3.22 and Exhibit Q;
 - (x) 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(f), if applicable; and
 - (xi) The obligation of Seller to post Performance Assurance under Section 8.02.
- (b) Limitations on Seller's and its Affiliates' 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 Sections 2.04(a)(ii), 2.04(a)(iii), 2.04(b) or 5.05(a) (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, generated by, 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 (the "Restricted Period").

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 on terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Generating Facility, or any part thereof, or land rights or interests in the Site (including the CAISO Queue Position) during the Restricted Period so long as the limitations contained in this Section 2.05(b) apply, unless the transferee agrees to be bound by the terms set forth in this Section 2.05(b) pursuant to a written agreement approved by SCE. Upon termination of this Agreement pursuant to the Sections referenced in the first paragraph of this Section 2.05(b), Seller shall complete, execute and to SCE's satisfaction, deliver to SCE a Notice of SCE's Rights in respect of the Site, in the form attached hereto as Exhibit V, that SCE may record giving notice of SCE's rights under Section 2.05(b). In addition, because the Site is located on land owned by the BLM, Seller shall also use good faith efforts to place on file with the BLM a notice of SCE's rights under this Section 2.05(b) and take any other actions and execute and deliver any further documents as SCE may reasonably request to provide notice of SCE's rights under this Section 2.05(b).

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, Capacity Attributes and Resource Adequacy Benefits.
- (a) Metered Amounts. Seller shall dedicate and convey the *entire* Metered Amounts throughout the Delivery Term to SCE. Seller shall convey title to and risk of loss of all Metered Amounts to SCE at the Delivery Point.
 - (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
 - (c) Capacity Attributes and Resource Adequacy Benefits. Seller shall dedicate and convey any and all Capacity Attributes and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility throughout the Delivery Term to SCE and SCE shall be given sole title to all such Capacity Attributes and Resource Adequacy Benefits.
 - (d) Further Action by Seller. Seller shall, at its own cost, take all actions and execute all documents or instruments necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term, which actions shall include:
 - (i) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
 - (ii) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes;
 - (iii) 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;
 - (iv) Complying with Applicable Laws regarding the certification and transfer of Renewable Energy Credits, including participation in the Western Renewable Energy Generation Information System ("WREGIS") or other process recognized under Applicable Laws for

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the registration, transfer or ownership of Green Attributes associated with the Generating Facility. With respect to WREGIS, Seller shall cause and allow SCE to be the “Qualified Reporting Entity” and “Account Holder” (as such terms are defined by WREGIS) for the Generating Facility; and

- (v) Committing to SCE the full output of the Generating Facility;

provided, however, that nothing in this Section 3.01(d) shall require Seller to exceed the Compliance Expenditure Cap in any year.

- (e) Exclusive Rights. SCE will have the exclusive right, at any time or from time-to-time throughout the Delivery Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Green Attributes, Capacity Attributes or Resource Adequacy Benefits to third parties; *provided, however*, any such action shall not constitute a transfer of, or a release of SCE of, its obligations under this Agreement.

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

- (f) Other Sales of Product. From the Effective Date until the end of the Term, Seller shall not sell the Product (or any portion thereof) to any entity other than SCE.

3.02 Resource Adequacy Rulings.

Seller grants, pledges, assigns and otherwise commits to SCE the full generating capacity of the Generating Facility in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

Seller represents, warrants and covenants to SCE that Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity 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 for any period during the Delivery Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity 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 Permits, Interconnection and Transmission Service Agreements, and CAISO Tariff Compliance.

- (a) Seller shall obtain and maintain any and all interconnection and transmission service rights and Permits required to effect delivery of the electric energy from the Generating Facility to the Delivery Point and to transmit the electric energy on the Transmission Provider's electric system, including a FERC-accepted transmission or distribution service agreement required to transmit such electric energy, solely to the extent required of Seller in accordance with Seller's LGIA, the CAISO Tariff and SCE's tariffs.
- (b) Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Transmission Provider's electric system at the Interconnection Point and transmission of electric energy from the Generating Facility on the Transmission Provider's electric system, solely to the extent required of Seller in accordance with Seller's LGIA, the CAISO Tariff and SCE's tariffs.
- (c) Seller shall comply with the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.
- (d) Seller shall secure through the CAISO the CAISO Global Resource ID that is to be used solely for this Generating Facility.
- (e) If, following the Effective Date, either the Interconnection Point or the Delivery Point is changed, the Parties will cooperate to make any necessary changes to this Agreement.

3.04 Development Security.

- (a) Amount.

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

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) Posting Requirements.

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

- (i) Seller shall post one-half of the Development Security within thirty (30) days following the Effective Date, with the remainder to be posted within thirty (30) days following CPUC Approval;
- (ii) The Development Security shall be held by SCE and shall be in the form of either a cash deposit or a Letter of Credit;
- (iii) 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; and
- (iv) 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.

(i) Failure to Meet Startup Deadline.

Subject to Seller's right to extend the Startup Deadline as provided in this Section 3.04(c), Section 1.04, and Section 5.03 (for Force Majeure where Seller is the Claiming Party), if:

- (1) Commercial Operation does not occur on or before the Startup Deadline; or
- (2) SCE gives Seller Notice that SCE has reasonably determined that a prudent developer exercising commercially reasonable diligence would not be able to achieve Initial Synchronization (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the Startup Deadline), and Seller does not send Notice to SCE that Seller dispute SCE's determination in good faith within thirty (30) days of Seller's receipt of the Notice from SCE,

SCE shall be entitled to retain the entire Development Security and terminate this Agreement and, subject to Section 2.05(b), neither Party

shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

(ii) **Daily Delay Liquidated Damages to Extend Startup Deadline.**

Seller may elect to extend the Startup Deadline by paying to SCE Daily Delay Liquidated Damages in an amount equal to one-half percent (0.5%) of the Development Security per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the Commercial Operation Date (“Daily Delay Liquidated Damages”).

To extend the Startup Deadline, Seller must 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 must provide this Notice as soon as reasonably possible for any extension that will last more than fourteen (14) calendar days, but this Notice can in no event be given later than 6 a.m. on the first day of the proposed extension.

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 between the Startup Deadline specified in Section 1.04, not including any extension obtained by Seller pursuant to this Section 3.04(c)(ii), and the Commercial Operation Date.

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

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- (i) Subject to Seller's achievement of Commercial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(c), if 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 Section 2.04(a), 2.04(b), 2.04(c) or 5.05(a), except for any Termination Payment as provided in Section 2.04.
- (e) Deficient Installation of Contract Capacity.
- (i) If Seller has achieved Commercial Operation by the Startup Deadline, but is only able to demonstrate a portion of the Contract Capacity in accordance with the procedure set forth in Exhibit L (the "Final 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 Final Demonstrated Contract Capacity.
 - (ii) If after the Final Test, the Contract Capacity is greater than the Final Demonstrated Contract Capacity as of the Firm Operation Date, then:
 - (1) The Contract Capacity shall be reduced to an amount equal to the Final Demonstrated Contract Capacity;
 - (2) The Expected Annual Net Energy Production set forth in Section 1.01(i) shall be calculated using the Installed DC Rating verified pursuant to the procedures in Exhibit L; and
 - (3) The Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 8.02 shall be recalculated using such adjusted Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Contract Capacity shall be returned to Seller as soon as reasonably possible.
 - (iii) Within thirty (30) days after the Firm Operation Date, SCE shall provide Notice to Seller setting forth the adjusted Contract Capacity, Expected Annual Net Energy Production and Performance Assurance Amount.
 - (iv) As of the Firm Operation Date, neither Party shall have any liability for failure to purchase or deliver Product associated with or

attributable to capacity in excess of the Final Demonstrated Contract Capacity (“Unincluded Capacity”), subject to Section 3.04(f).

(f) Restrictions on Sales Related to Unincluded Capacity.

- (i) 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 any 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.
- (ii) With respect to Seller’s Affiliates, 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, any Seller’s Affiliate wishing to enter into a contract or sale provides 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; *provided that* any Seller’s Affiliate wishing to enter into a contract or sale must:
 - (1) Build a new generating facility separate from the Generating Facility to produce such additional electric energy and associated attributes;
 - (2) Establish an entity other than Seller to act as the seller for such additional electric energy and associated attributes;
 - (3) Meter such additional generating capacity separately from the Generating Facility, to SCE’s reasonable satisfaction; and
 - (4) Interconnect such additional generating capacity, separately from the Generating Facility, to the Transmission Provider to SCE’s reasonable satisfaction.

If the preceding conditions are met, Seller’s Affiliates (but not Seller) shall be free to sell such additional electric energy and associated attributes to third parties.

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 Energy Delivery Obligation.**

"Seller's Energy Delivery Obligation" for the twenty-four (24) month period immediately preceding the end of each Term Year commencing at the end of the second Term Year ("Calculation Period") shall be equal to the sum of:

- (1) Seventy percent (70%) of the Expected Annual Net Energy Production calculated pursuant to Section 1.01(i) for the first of the two applicable Term Years; plus
- (2) Seventy percent (70%) of the Expected Annual Net Energy Production calculated pursuant to Section 1.01(i) for the second of the two applicable Term Years.

(ii) Event of Deficient Energy Deliveries.

At the end of each Term Year commencing with the end of the second Term Year, if the sum of Qualified Amounts plus any Lost Output (calculated in accordance with Exhibit M) in the applicable Calculation Period does not equal or exceed Seller's Energy Delivery Obligation, *then* an Event of Deficient Energy Deliveries shall be deemed to have occurred.

(b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.05(a)(ii) above, the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's 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 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, 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 Seller disputes along with a detailed explanation of, and rationale for, Seller's calculation methodology, 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.

(c) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount, 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 throughout the Delivery Term, as provided in Sections 3.01 and 3.02.

3.06 Metering, Communications, Telemetry and Meteorological Station(s).

(a) CAISO Approved Meter.

Seller shall, at its own cost, install, maintain and test all CAISO Approved Meters pursuant to the CAISO Tariff.

(b) Check Meter.

SCE may furnish and install one Check Meter on the high voltage side of each step-up transformer (or any other location at SCE's sole discretion) at the Generating Facility. Each Check Meter must be interconnected with SCE's communication network to permit:

- (i) Periodic, remote collection of revenue quality meter data; and
- (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.06(f).

Before Initial Synchronization, SCE shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

SCE shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal will be broken, only by a SCE representative. Seller has the right to be present whenever such lock or seal is broken. SCE shall replace the Check Meter battery at least once every 36 months.

(c) Use of Check Meter for Back-Up Purposes.

- (i) SCE shall routinely compare the Check Meter data to the CAISO Approved Meter data after adjusting the Check Meter for any compensation introduced by the CAISO into the CAISO Approved Meter.
- (ii) If the deviation between the CAISO Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, SCE shall provide Notice to Seller of such deviation and the Parties will mutually arrange for a meter check or recertification of the Check Meter or CAISO Approved Meter, as applicable.
- (iii) Each Party will bear its own costs for any meter check or recertification.
- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable SCE-owned revenue-grade meter. Seller has the right to have representatives present during all such tests.

(d) SCE's Access to Meters.

- (i) Subject to Section 3.18, Seller hereby grants SCE reasonable access to all CAISO Approved Meter(s) and Check Meters for meter readings and any purpose necessary to effectuate this Agreement.

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

- (ii) Prior to Initial Synchronization, Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide SCE with read-only access to the CAISO Approved Meter and to Seller's settlement data on OMAR.

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

(e) CAISO Approved Meter Maintenance.

- (i) Seller shall test and calibrate the CAISO Approved Meter, as necessary, but in no event shall the period between testing and calibration dates be greater than twenty four (24) months.
- (ii) Seller shall replace the CAISO Approved Meter battery at least once every thirty six (36) months or such shorter period as may be recommended by the battery manufacturer.

Notwithstanding the foregoing, in the event the CAISO Approved Meter battery fails, Seller shall replace such battery within one (1) day after becoming aware of its failure.

- (iii) Seller shall use certified test and calibration technicians to perform any work associated with the CAISO Approved Meter.
- (iv) Seller shall inform SCE of test and calibration dates, provide SCE with access to observe and witness such testing and calibration, and provide SCE certified results of tests and calibrations within thirty (30) days after completion.

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

Seller shall be responsible for designing, furnishing, installing, maintaining, testing and operating a real time Telemetry System capable of interconnecting the CAISO-Approved Meter(s) and the Generating Facility's control system with the CAISO's Energy Communication Network.

The Telemetry System shall be designed in accordance with the CAISO monitoring and communication requirements and must be capable of:

- (i) Reporting data from each CAISO Approved Meter;
- (ii) Providing the status of key control points from the Generating Facility's control system;

- (iii) Routing generating unit set points to the Generating Facility's control system; and
- (iv) If the Generating Facility is subject to PIRP, communicating availability of the Generating Facility pursuant to Section 3.06(h).

The Telemetry System must include a data processing gateway, internet connection, interconnecting cabling and all service agreements required for accessing the CAISO's Energy Communications Network.

Subject to Exhibit T, the above mentioned connections and data transfer (x) must be included in the systems engineering tasks as a part of the construction of the Generating Facility, and (y) must be fully functional pursuant to Exhibit T before Initial Synchronization.

(g) Meteorological Station(s) and Reporting Requirements.

Seller, at its own expense, shall install and maintain one (1) or more, as applicable, stand-alone meteorological station(s) at the Generating Facility in accordance with Exhibit T to monitor and report weather data to both the CAISO and the existing SCE weather station data collection system.

The station(s) shall be installed at least sixty (60) days before Initial Synchronization.

The station(s) shall be equipped with instruments and equipment that meet those specifications set forth in Exhibit T ("Meteorological Equipment"), as may be modified by SCE from time to time to reflect the CAISO's PIRP protocol.

The station(s) shall be designed to collect and record data in accordance with CAISO's PIRP protocols.

Subject to Exhibit T, the station(s) shall be fully installed, and Seller must begin to provide SCE on a daily basis with all meteorological data to be collected by the equipment set forth in Exhibit T, at least sixty (60) days before Initial Synchronization.

Seller shall communicate meteorological data to SCE via a system consistent with SCE's employed methods as set forth in Exhibit T.

Data reports shall be formatted in a manner consistent with the CAISO requirements published on the CAISO internet home page.

Telemetry equipment shall be designed to function in accordance with CAISO's PIRP protocols and SCE's communication system employed at the time of installation as set forth in Exhibit T.

The stations shall be equipped to measure and record the minimum data required by the CAISO, in the manner specified by the CAISO.

Seller shall submit to SCE for review and approval, Seller's technical specifications for the meteorological station(s) along with a site plan drawing showing the location of the station(s), Photovoltaic Modules, Current Inverters and other prominent features.

(h) Real-Time Communication of Availability.

(i) Prior to Initial Synchronization, Seller shall install a telecommunication system and demonstrate to SCE's reasonable satisfaction that the system interfaces with the Web Client to provide SCE with Seller's aggregated available capacity of the Generating Facility on a real-time basis ("Real-Time Availability") in accordance with the requirements set forth in the CAISO Tariff.

(ii) If Seller installs such telecommunication system, Seller shall, throughout the Term, maintain the telecommunications path, the hardware, and software to provide quality data to SCE.

(iii) Upon Notice from SCE, Seller shall repair or have corrected within five (5) days of receipt of such Notice any of the following owned or controlled by Seller:

(1) Inoperable telecommunications path;

(2) Inoperable software; or

(3) Faulty instrumentation;

provided, however, that Seller shall inform SCE immediately if Seller suspects a problem is developing in SCE's equipment.

(iv) Seller shall submit an Actual Availability Report pursuant to Section 3.23 for any month in which Seller's telecommunications system was not available or did not provide quality data for longer than twenty four (24) continuous hours.

3.07 Site Control.

- (a) At all times during the Delivery Term, 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 with respect to the Site; or
 - (iv) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.
- (b) Seller shall provide SCE with prompt 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, so long as the Interconnection Point 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 Change in Structure, Ownership or Financing.

- (a) Seller shall provide Notice to SCE within five (5) Business Days of an actual or pending change in the status of any of the following:
 - (i) Seller’s exact and complete name, form of organization and state of incorporation or organization; or address of Seller’s principal place of business;
 - (ii) Seller’s members, general partners, or joint venturers, Seller’s indirect owners up to and including Seller’s Ultimate Parent, Seller’s chief executive officer or equivalent thereof, or Seller’s Guarantor, as applicable; or

- (iii) Seller's or Seller's Guarantor's Moody's, Fitch and S&P's senior unsecured debt rating or, if such entities do not have a senior unsecured debt rating, then Seller's or Seller's Guarantor's corporate credit rating or long term issuer rating, if any.
- (b) Seller must provide SCE with Notice within five (5) Business Days after the closing of Seller's initial construction financing. Thereafter, Seller must provide Notice to SCE of the closing of any debt or equity financing or refinancing facility having a principal amount in excess of ten million dollars (\$10,000,000) with this Notice to be provided within five (5) Business Days of the end of any calendar quarter in which the closing occurred.
- (c) No Notice provided pursuant to this Section 3.09 constitutes or substitutes for any consent required pursuant to Sections 10.04 or 10.05.

3.10 Design.

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 Synchronization 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 the Site;
 - (vii) Artist renderings of the Site, if any;
 - (viii) Aerial photographs of the Site, if any;
 - (ix) Photovoltaic Module specification(s); and
 - (x) Solar energy collection grid diagrams; and

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- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in the Generating Facility, 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 3.10(c) above, along with all specifications and drawings pertaining to any such changes and any changes to Exhibit B. As used in the preceding sentence, the term “changes” means alterations or modifications to the Generating Facility that change in any material respect its operating characteristics, but does not include ordinary course maintenance and repairs, or repairs made in response to an emergency that merely restore the Generating Facility to its status immediately before the emergency.

Without limiting the foregoing, Seller shall provide Quarterly Facility Status Reports in the form of Exhibit O.

3.11 Operation and Record Keeping.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Seller shall comply with Operating orders from either the CAISO or Transmission Provider in compliance with the CAISO Tariff and Seller’s LGIA.
- (c) On or prior to Initial Synchronization:
 - (i) Seller shall obtain CEC Certification and Verification;
 - (ii) Seller shall obtain Material Permits as set forth in Section 2.02(c)(iii);
 - (iii) Seller shall take all steps necessary to ensure that SCE becomes authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
 - (iv) SCE shall have been authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
 - (v) Seller shall demonstrate to SCE’s reasonable satisfaction that Seller has executed all necessary Transmission Provider and CAISO agreements;
 - (vi) Seller shall provide to SCE the DLF, if applicable, used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility;
 - (vii) Seller shall be Forecasting to SCE;

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- (viii) Seller shall commence delivering electric energy to SCE at the Delivery Point;
 - (ix) Seller shall have installed and placed in operation the stand-alone meteorological station required under Section 3.06(g);
 - (x) Seller shall register with NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to be a registered entity pursuant to the NERC Reliability Standards;
 - (xi) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the CAISO Approved Meter as set forth in Section 3.06(a); and
 - (xii) Seller shall have furnished to SCE all insurance documents required under Section 10.11(c).
- (d) Seller shall keep a daily operations log for the Generating Facility that shall include the following information:
- (i) Availability of the Inverter Block Units and associated Current Inverters;
 - (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.
- (e) Seller shall maintain complete records of the Generating Facility's solar insolation and other pertinent meteorological conditions and operational status of each Inverter Block Unit.

- (f) 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.

Seller shall maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC Reliability Standards applicable to protection systems for large electric generators.

Such information in (d) through (f) above shall be provided or made available to SCE within twenty (20) days after any Notice requesting the same.

- (g) Upon notification from SCE, Seller shall promptly curtail the production of the Generating Facility. Such notification shall be provided to Seller only in the event SCE, as Seller's Scheduling Coordinator, is instructed by the CAISO to curtail energy deliveries in order to respond to a CAISO Forecasted Over-Generation Condition, a CAISO Declared Over-Generation Condition or an Emergency and shall be revoked as soon as reasonably possible after the CAISO-ordered curtailment ends.
- (h) Information maintained pursuant to this Section 3.11 shall be kept for the Delivery Term of this Agreement and shall be provided or made available to SCE within twenty (20) days after any Notice requesting the same.

3.12 Obtaining Scheduling Coordinator Services.

Seller shall comply with all applicable CAISO Tariff procedures, protocol, rules and testing as necessary for SCE to submit SC Schedules for the electric energy produced by the Generating Facility.

- (a) SCE as Scheduling Coordinator.
- (i) At least thirty (30) days prior to Initial Synchronization, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as Seller's Scheduling Coordinator during the Startup Period and throughout the Term of this Agreement.
- (ii) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator.

(b) Replacement of Scheduling Coordinator.

At least forty five (45) days prior to the end of the Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Term, Seller shall take all actions necessary to terminate the designation of SCE as Seller's Scheduling Coordinator. These actions include the following:

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

3.13 Installation and Demonstration of Generating Facility in Increments.

Seller will in good faith endeavor to install the entire Contract Capacity, and will install the Generating Facility in Increments, beginning before Initial Synchronization and ending no later than the Commercial Operation Date.

Subject to the preceding sentence, Seller will determine the installation schedule in its sole discretion.

During the Startup Period Seller shall provide SCE, by no later than the last Business Day of the month preceding the month of the expected Initial Synchronization Date and by no later than the last Business Day of every month thereafter, Seller's Notice of Planned Installation.

Beginning in the month following the month of the Initial Synchronization Date, no later than the third (3rd) Business Day of every month during the Startup Period, Seller shall provide SCE with a Notice of Completed Installation describing (with reference to Exhibit B) the proportion of the Contract Capacity installed as of the end of the immediately prior month and specifying in kilowatts the amount of Generating Facility Capacity installed ("Claimed Capacity").

Commencing in the month in which, as specified in a Seller's Notice of Planned Installation, the Claimed Capacity is expected to exceed fifty percent (50%), Seller will demonstrate, in accordance with the procedures set forth in Exhibit R for an Incremental Test, the amount of Contract Capacity installed as of the Demonstration Period.

The amount of Contract Capacity demonstrated in accordance with the procedures in Exhibit R shall be used for purposes of determining the Cumulative Percentage of Installed Capacity and calculating the Startup Payment pursuant to Section 4.02(a).

3.14 Forecasting.

Seller shall Forecast or cause to be Forecasted the Availability of the Generating Facility, in accordance with the provisions of Exhibit D.

3.15 Scheduled Outages.

- (a) Commencing at least sixty (60) days prior to Initial Synchronization and throughout the Term, Seller shall, no later than January 1, April 1, July 1 and October 1 of each year, submit to SCE its schedule of proposed planned outages (“Outage Schedule”) for the subsequent twenty four-month period using a web-based system approved by SCE (“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.
- (d) Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the CAISO.
- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall promptly provide Notice to SCE, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.
- (f) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the

reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3.16 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 quarterly written report on or before the first day of each calendar quarter until the BLM Permit is obtained, and thereafter a monthly written report on or before the first day of each calendar month, 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 material 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 Seller is aware which may materially impact Seller's ability to meet the Milestone Schedule.

Seller shall advise SCE as soon as reasonably practicable of any change in the Forecasted Initial Synchronization Date, which Seller may change from time to time in its reasonable discretion.

3.17 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;
- (b) All applications and approvals relating to CEC Certification and Verification, any Permits and PIRP;
- (c) All draft, preliminary, final and revised copies of all material reports, studies and analyses furnished by the CAISO, Seller's transmission consultant, or any Transmission Provider, and any material correspondence related thereto, concerning the interconnection of the Generating Facility to the Transmission Provider's electric system or the transmission of electric energy on the Transmission Provider's electric system;
- (d) All notifications of adjustments in the DLF, if applicable, used by the Transmission Provider in the administration of the transmission service

agreement for the Generating Facility within thirty (30) days of receiving such notification from the Transmission Provider;

- (e) All Solar Resource Evaluation 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;
- (f) Any material reports, studies, or assessments of the Generating Facility prepared for Seller by an independent engineer, but excluding reports, studies or assessments:
 - (i) Prepared for a Lender; or
 - (ii) Prepared in connection with dispute resolution under Article Twelve and the reports, studies or assessments would not otherwise be discoverable; and
- (g) All Generating Facility and metering information as may be requested by SCE, including the following, at least thirty (30) days prior to the Forecasted Initial Synchronization Date:

For each CAISO Approved Meter:

- (1) Generating Station/Unit ID;
- (2) CAISO Global Resource ID;
- (3) CAISO Approved Meter Device ID;
- (4) Password;
- (5) Data path (network (ECN) or modem);
- (6) If modem, phone number;
- (7) Copy of meter certification;
- (8) List of any CAISO metering exemptions (if any); and
- (9) Description of any compensation calculations such as transformer losses and line losses.

For the Generating Facility:

- (1) Utility transmission/distribution one line diagram;

- (2) Physical location, address or descriptive identification;
 - (3) Latitude and longitude;
 - (4) Telephone number on site;
 - (5) Telephone number of control room;
 - (6) Telephone number for operational issues; and
 - (7) Telephone number for administrative issues; and
- (h) The names of the Interconnection Point and the Delivery Point within thirty (30) days after Seller's receipt of such information from the Transmission Provider or CAISO, as applicable.

3.18 SCE's Access Rights.

Seller hereby grants SCE the right of immediate ingress and egress to examine the Site and Generating Facility during or in order to prevent an emergency. In all other cases, Seller hereby grants SCE the right of ingress and egress to examine the Site and Generating Facility upon one (1) Business Days' Notice, 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, subject to SCE's compliance with all written safety guidelines covering the Generating Facility at the time of the examination and provided to SCE by Seller in advance of the examination.

3.19 Obtaining and Maintaining CEC Certification and Verification; Compliance Expenditure Cap.

- (a) 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 this obligation shall not apply to the extent that Seller is unable to obtain and maintain CEC Certification and Verification because of a change in the RPS Legislation, or the rules or regulations relating thereto, occurring after the Effective Date and Seller has made commercially reasonable efforts to obtain and maintain CEC Certification and Verification under the then-current Applicable Law, subject to the limitations set forth in Section 3.19(b) below.
- (b) Notwithstanding the foregoing, Seller will not be required to incur out-of-pocket costs in excess of seventy-five thousand dollars (\$75,000) within any given year (the "Compliance Expenditure Cap") to obtain and maintain such CEC Certification and Verification or otherwise comply with requirements

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applicable to Seller with respect to WREGIS, RPS Legislation, Green Attributes, Capacity Attributes or Resource Adequacy Benefits, that are solely due to a change in the RPS Legislation, or the rules or regulations relating to any of the foregoing occurring after the Effective Date (the “Compliance Actions”).

- (c) If Seller reasonably anticipates the need to incur out of pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action:
 - (i) Seller shall provide Notice to SCE as soon as reasonably possible of such anticipated costs; and
 - (ii) SCE shall have the right, in its sole discretion, to:
 - (1) Approve such expenditures; or
 - (2) Waive Seller’s obligation to take such Compliance Actions, or any part thereof.

SCE shall evaluate such Notice and respond to Seller as soon as reasonably possible, and may agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such SCE-agreed upon costs, the “Accepted Compliance Costs”).

If SCE agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and SCE shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs. Seller shall not be required to take any of the Compliance Actions (and shall not be responsible for the consequences of failing to take any such action) to the extent that the cost of such Compliance Actions exceeds the Accepted Compliance Costs.

3.20 Notice of Cessation or Termination of Service Agreements.

Seller shall provide Notice to SCE within one (1) Business Day after termination of, or cessation of service under, any agreement necessary for the interconnection to the Transmission Provider’s electric system, for transmission of the electric energy on the Transmission Provider’s electric system, for delivering Product to SCE, or for metering the Metered Amounts.

3.21 Lost Output Report.**(a) Monthly Report; SCE Review.**

Commencing upon Commercial 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 month in accordance with Exhibit M.

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

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

(b) Disputes of Lost Output.

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

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

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

Seller shall have no right to claim any Lost Output for any month that was not identified in the original Lost Output Report for that month; *provided that*, Seller may supplement the amount of Lost Output claimed ("Supplemental Lost Output") for the month with a supplemental Lost Output Report ("Supplemental Lost Output Report") if Seller can demonstrate that it neither knew nor could 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 using the Generating Facility Energy Yield Curve derived for the Term Year for which the Lost Output is being calculated.

3.22 CAISO Charges, CAISO Sanctions and SCE Penalties.

- (a) Throughout the Delivery Term, Seller shall have no responsibility for CAISO Charges attributable to or assessed for energy delivered by Seller to SCE.
- (b) Throughout the Delivery Term, Seller shall be responsible for all CAISO Sanctions, if any, pursuant to Exhibit Q.
- (c) Throughout the Delivery Term, in the event Seller fails to comply with the availability forecasting provisions set forth in Exhibit D, Seller may be liable to pay an SCE Penalty as set forth in Exhibit Q.
- (d) Seller shall make payments for CAISO Sanctions and any SCE Penalty in accordance with those provisions set forth in this Section 3.22 and Exhibit Q.
- (e) If Seller disputes any CAISO Sanction, Seller shall provide Notice of such dispute within five (5) Business Days of becoming aware of such CAISO Sanction.

3.23 Actual Availability Report.

- (a) Throughout the Delivery Term, Seller shall prepare and provide to SCE a report with the Settlement Interval Actual Available Capacity of the Generating Facility (an “Actual Availability Report”) for each month.

Such report shall be in the form set forth in Exhibit S and shall be delivered to SCE no later than the seventh (7th) Business Day following the end of the month which is the subject of the Actual Availability Report.
- (b) Upon SCE’s request, Seller shall promptly provide to SCE any additional data and supporting documentation reasonably necessary for SCE to audit and verify any matters set forth in the Actual Availability Report.

3.24 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 U, including unaudited statements of income, unaudited statements of cash flow and unaudited

balance sheets, in order to determine if SCE, or its parent company, may have to consolidate Seller's financial information for securities reporting purposes, and to effectuate such consolidation if and when necessary.

3.25 Seller's Provision of Solar Data.

- (a) Seller shall work with SCE to expeditiously locate a site for the installation of a meteorological equipment station in the vicinity of the Site that will provide data for purposes of developing a forecasting model. SCE and Seller will use commercially reasonable good faith efforts to have a functional meteorological equipment station within one (1) year after the Effective Date.
- (b) The sensors used to measure the meteorological parameters must meet the accuracy requirements listed in Exhibit T.

Seller may provide data from additional years if any such data is available.

- (c) Data Parameters.

For each equipment station that is installed, Seller is to provide the following data to the extent such data has been recorded:

- (i) Total global irradiance;
- (ii) Wind direction;
- (iii) Wind speed;
- (iv) Air temperature;
- (v) Barometric pressure;
- (vi) Relative humidity;
- (vii) Elevation of the station; and
- (viii) Latitude and longitude of the station.

- (d) Format of Data.

Seller shall provide the data:

- (i) In the format to be specified by SCE; and
- (ii) In the interval in which such data was recorded.

3.26 Application of Prevailing Wage.

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

3.27 NERC Electric System Reliability Standards.

During the Delivery Term, Seller shall be (i) responsible for complying with any NERC Reliability Standards applicable to the Generating Facility, including registration with NERC as the Generator Operator for the Generating Facility or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by NERC, WECC or CAISO for compliance with the NERC Reliability Standards; and (ii) liable for all penalties assessed by NERC (through WECC or otherwise) for violations of the NERC Reliability Standards by the Generating Facility or Seller, as Generator Operator or other applicable category. However, if Seller learns that NERC (through WECC or otherwise) is considering or intends to assess Seller with a penalty that Seller believes is attributable to SCE's actions or inactions as Scheduling Coordinator as described in the document entitled "Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator" or other successor description or document on the CAISO website at the time of the potential assessment, Seller shall provide SCE with sufficient notice to allow SCE to take part in administrative processes, discussions or settlement negotiations with NERC, WECC or other entity arising from or related to the alleged violation or possible penalty. If the penalty is nonetheless assessed in spite of SCE's participation in the processes, discussions or settlement negotiations, or SCE waives its right to take part in the processes, discussion or settlement negotiations, SCE shall reimburse Seller for the penalty to the extent that (a) it was solely caused by SCE's actions or inactions as Scheduling Coordinator as described in the document entitled "Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator" or other successor description or document on the CAISO website at the time of the violation; and (b) Seller can establish to SCE's reasonable satisfaction that the penalty was actually assessed against Seller by NERC and paid by Seller to NERC. If SCE took part in and agreed to the terms of settlement, SCE shall also reimburse Seller for any payment made by Seller in settlement of a claim of violation by or on behalf of NERC, to the extent that (x) the claim being settled was solely caused by SCE's actions or inactions as Scheduling Coordinator as described in the document entitled "Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator" or other successor description or document on the CAISO website at the time of the claim; and (y) Seller can establish to SCE's reasonable satisfaction that Seller actually made the payment to NERC under the settlement.

*** End of ARTICLE THREE ***

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

ARTICLE FOUR. SCE'S OBLIGATIONS4.01 Obligation to Pay.

- (a) For Seller's *full* compensation under this Agreement, SCE shall make:
 - (i) Monthly Startup Payments to Seller during the Startup Period calculated in the manner described in Section 4.02(a) ("Startup Payments"); and
 - (ii) Monthly Energy Payments to Seller during the Term calculated in the manner described in Section 4.02(b) and Exhibit Q ("Energy Payments").
- (b) During the Startup Period and the Term, SCE shall purchase electric energy generated by the Generating Facility and delivered at the Delivery Point in accordance with this Agreement, CAISO Tariff Protocols and Applicable Law, *provided*, SCE has no obligation to purchase from Seller any Product or any electric energy to the extent that it is not or cannot be delivered to the Delivery Point as a result of any circumstance, including:
 - (i) An outage of all or a portion of the Generating Facility;
 - (ii) A Force Majeure under Article Five;
 - (iii) A reduction or curtailment of deliveries ordered by the CAISO; or
 - (iv) A reduction or curtailment of deliveries pursuant to the terms of an agreement between Seller and any Transmission Provider.
- (c) SCE shall not be obligated to pay Seller for any Product that Seller delivers after the effective time of, and in violation of, a curtailment order delivered to Seller by the Transmission Provider in accordance with the LGIA or delivered by SCE (as Scheduling Coordinator) as ordered by the CAISO in accordance with the CAISO Tariff.

4.02 Payments and Adjustments.(a) Payment Calculations for Startup Period.

For the purpose of calculating Startup Payments for Product delivered to SCE in any month during the Startup Period:

$$\text{STARTUP PAYMENT} = A \times B \times C \times D \times E$$

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Where:

- A = Energy Price specified in Section 1.07 and Exhibit P in \$/kWh (i.e., \$/MWh/1000).
- B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.
- C = The sum of Metered Amounts in all hours for the TOD Period being calculated in kWh.
- D = Any applicable Delivery Loss Factor, in percent.
- E = Cumulative Percentage of Installed Capacity that has been installed as of the end of the preceding month (as verified pursuant to Exhibit R), but not less than fifty percent (50%) or greater than ninety-five percent (95%).

Without any duplication to “D” above, if the CAISO Approved Meter does not measure, or is not compensated to measure, the energy at the Delivery Point, SCE will apply a line loss factor or transformation loss factor to adjust the Metered Amounts in the above formula.

(b) Energy Payment Calculations during the Term.

For the purpose of calculating Energy Payments for Product delivered to SCE during the Term in accordance with the terms of this Agreement, Metered Amounts shall be time-differentiated according to the 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:

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

Where:

- A = Energy Price specified in Section 1.07 and Exhibit P in \$/kWh (i.e., \$/MWh/1000).
- B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.

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

D = Any applicable Delivery Losses, in percent.

Without any duplication to “D” above, if the CAISO Approved Meter does not measure, or is not compensated to measure, the energy at the Delivery Point, SCE will apply a line loss factor or transformation loss factor to adjust the Metered Amounts in the above formula.

4.03 Payment Statement and Payment.

(a) After Initial Synchronization, on or before the last Business Day of the month immediately following each calendar month during which:

- (i) Metered Amounts are provided to SCE;
- (ii) CAISO Sanctions or any SCE Penalties are incurred; or
- (iii) Adjustments for payment errors are made as set forth below;

SCE shall do each of the following:

- (iv) Send a statement to Seller showing:
 - (1) The Metered Amounts for each month or each TOD Period during the month, as applicable, for which the payment is being made;
 - (2) A calculation of the amount payable to Seller for the month pursuant to Section 4.02;
 - (3) The CAISO Sanctions and SCE Penalties pursuant to Exhibit Q, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electric energy deliveries during that month) or thirty (30) days after the CAISO final settlement data is available to SCE for such deliveries, whichever is sooner; and
 - (4) A calculation of the net amount due Seller; and
- (v) Send to Seller, via wire transfer, SCE’s payment of said net amount, plus, if such payment is late, a Simple Interest Payment calculated using the Interest Rate and the number of days that such payment is late.

(b) Recomputation and Payment Adjustments.

(i) Inaccurate Meters or Recalculation of CAISO Sanctions.

In the event SCE determines that a calculation of Metered Amounts, CAISO Sanctions or SCE Penalties is incorrect as a result of inaccurate meters, the correction of data by the CAISO in OMAR, or a recalculation of CAISO Sanctions by the CAISO, SCE shall promptly recompute Metered Amounts, CAISO Sanctions or SCE Penalties for the period of the inaccuracy based upon an adjustment of inaccurate meter readings, correction of data or recalculation of CAISO Sanctions in accordance with the CAISO Tariff.

SCE shall also promptly recompute any payment affected by any meter or CAISO Sanction or SCE Penalty inaccuracy.

(ii) Adjustment of Payment.

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 any subsequent monthly payment statement, any such additional amount still owing to SCE shall be netted against amounts owed to Seller in any additional subsequent monthly payments to Seller or invoiced to Seller, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

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

Adjustment payments for meter inaccuracy shall not bear interest.

(c) Netting Rights.

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

- (i) Owing and unpaid by Seller to SCE under this Agreement; or
- (ii) Owed to SCE by Seller arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

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

(d) Miscellaneous.

- (i) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if within forty five (45) days after receipt of SCE's payment statement, Seller does not give Notice to SCE of an error, then Seller shall be deemed to have waived any error in SCE's statement, computation and payment, and the statement shall be conclusively deemed correct and complete; provided, however, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by SCE after the expiration of the original forty five (45) day period, Seller shall have an additional forty five (45) days from the date on which Seller receives the information from SCE in which to give Notice to SCE of the error identified by such settlement, audit or other information.
- (ii) 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.
- (iii) 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.
- (iv) 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 provided by the CAISO and not available to SCE when SCE rendered its original statement shall not bear interest.
- (v) 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

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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.

- (vi) The Parties shall negotiate in good faith to resolve any disputes regarding claimed errors in a payment statement.
- (vii) 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 Scheduling Coordinator.

Commencing upon Initial Synchronization, SCE shall act as Scheduling Coordinator, on behalf of Seller, and shall submit bids and Schedules to the CAISO in accordance with CAISO Tariff protocols.

(a) Duties as Scheduling Coordinator.

- (i) SCE shall submit all notices and updates required under the CAISO Tariff regarding the Generating Facility's status to the CAISO.
- (ii) SCE shall timely validate all CAISO Sanctions and in the event SCE believes that any CAISO Sanction is incorrect and disputable under the CAISO Tariff or upon Notice by Seller of any dispute of a CAISO Sanction, SCE shall timely dispute any such CAISO Sanction in accordance with the procedures set forth under the CAISO Tariff.

(b) Termination of Scheduling Coordinator.

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

- (i) Thirty (30) days prior to the end of the Term;
- (ii) The date of any Notice from Seller of suspension of its performance pursuant to Section 6.02; or
- (iii) The date of any early termination of this Agreement.

4.05 CAISO Charges.

- (a) SCE shall be responsible for all CAISO Charges.
- (b) To the extent that SCE requires Seller to participate in the PIRP program, SCE shall be responsible for PIRP forecasting fees.

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 it first knew or should have known of the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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

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

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

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

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

5.03 Startup Deadline Extension.

If Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, *then* the Startup Deadline shall, subject to Section 1.04 and 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 and to Section 5.05, be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 Termination.

- (a) Subject to Sections 5.05(b) and 5.05(c) below, either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which extends for more than three hundred sixty-five (365) consecutive days and materially adversely affects a Party's ability to perform its obligations hereunder; *provided, however*, if the Generating Facility suffers a casualty event constituting a Force Majeure and Seller has not been able to repair the Generating Facility within three hundred sixty-five (365) days in spite of diligent good faith efforts, then Seller may have an additional three hundred sixty-five (365) consecutive days to repair the Generating Facility.
- (b) After the Commercial Operation Date, if the Generating Facility suffers a casualty event constituting a Force Majeure that reduces the Generating Facility Capacity (but such reduction is not to zero percent (0%) of the Contract Capacity), and Seller is unable to overcome such Force Majeure within the time frames specified in Section 5.05(a) solely as the result of some third-party action or inaction beyond the reasonable control of Seller (e.g., a Governmental Agency's refusal to grant necessary permits to rebuild following a casualty loss) after Seller has taken all commercially reasonable actions to overcome the same, then:
 - (i) Within five (5) Business Days following the date that is seven hundred (700) days after the casualty event constituting the applicable Force Majeure, Seller shall provide Notice to SCE of its inability to overcome such Force Majeure. Within thirty (30) days following

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- SCE's receipt of such Notice from Seller, SCE shall conduct a new site visit to determine the then-current Generating Facility Capacity;
- (ii) The Contract Capacity shall be reduced to the then-demonstrated Generating Facility Capacity, effective as of the first day of the month immediately following the month in which the site visit described in 5.05(b)(i) is concluded, and such reduction shall be without liability of Seller to SCE for penalties or damages;
 - (iii) The Expected Annual Net Energy Production and Performance Assurance Amount shall be reduced accordingly; and
 - (iv) Seller shall submit a revised Exhibit B describing the Generating Facility and the Site.
- (c) If at any time during the 18th, 19th or 20th Term Years, the Generating Facility suffers a casualty event constituting a Force Majeure that reduces the Generating Facility Capacity (but such reduction is not to zero percent (0%) of the Contract Capacity), and Seller delivers to SCE a report prepared by an independent engineer approved by SCE in its reasonable discretion, the cost of which shall be borne solely by Seller, which states that a reasonably prudent developer would not be able to repair the Generating Facility within three hundred sixty-five (365) days through diligent good faith efforts, then, unless the Parties agree otherwise:
- (i) Within thirty (30) days following SCE's receipt of such independent engineer's report from Seller, SCE shall conduct a new site visit to determine the then current Generating Facility Capacity;
 - (ii) The Contract Capacity shall be reduced to the then-demonstrated Generating Facility Capacity, effective as of the first day of the month immediately following the month in which the site visit described in 5.05(c)(i) is concluded, and such reduction shall be without liability of Seller to SCE for penalties or damages;
 - (iii) The Expected Annual Net Energy Production and Performance Assurance Amount shall be reduced accordingly; and
 - (iv) Seller shall submit a revised Exhibit B describing the Generating Facility and the Site.
- (d) If at any time during the Term after a reduction in Contract Capacity pursuant to Section 5.05(b) or 5.05(c) any additional solar electrical generation capacity is installed at the Site:

- (i) Such additional capacity shall automatically be included as Generating Facility Capacity up to and including the original Contract Capacity, demonstrated in a manner consistent with the provisions of Section 3.13 of this Agreement;
- (ii) The Contract Capacity shall be increased accordingly;
- (iii) The Expected Annual Net Energy Production and Performance Assurance Amount shall be increased accordingly; and
- (iv) Seller shall submit a revised Exhibit B describing the Generating Facility and the Site;

provided, prior to the commencement of installation of additional solar electrical generation capacity, Seller shall provide Notice to SCE at least sixty (60) days prior to such installation.

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

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default.

An “Event of Default” shall mean, with respect to a 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, *provided*, if:
 - (1) The misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
 - (2) The misrepresentation or breach of warranty is not capable of a cure, but the non-breaching Party’s damages resulting from the inaccuracy can reasonably be ascertained, an Event of Default will be deemed to occur if 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 with a different, or that does not have, a cure period, 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*, 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 required under this Agreement (other than amounts disputed in good faith in accordance with the dispute resolution terms of this Agreement) and such failure is not cured within five (5) Business Days after Notice of such failure;

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- (iv) A Party becomes Bankrupt; or
 - (v) 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 such Party 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, unless Seller has replaced such Guarantor, in which case the events listed below are applicable to such replacement Guarantor, or provided alternative Performance Assurance, in accordance with the provisions of this Agreement):
- (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 misrepresentation or breach of 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 fails 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;
 - (iv) A Guarantor becomes Bankrupt;
 - (v) The failure of a Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
 - (vi) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement;
 - (vii) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or

- becoming capable at such time of being declared, immediately due and payable; or
- (viii) The occurrence and continuation of a default 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;
- (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 thereof from SCE;
 - (ii) Except as permitted in Sections 10.04 and 10.05, Seller does not own the Generating Facility;
 - (iii) Seller does not have Site Control in accordance with Section 3.07(a) and Seller has not cured such a failure within sixty (60) days after the occurrence of the event which results in such failure;
 - (iv) Following the Firm Operation Date, the sum of Qualified Amounts plus Lost Output in any consecutive six (6) month period is not at least ten percent (10%) of the Expected Annual Net Energy Production set forth in Section 1.01(i), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;
 - (v) Seller installs Generating Facility Capacity in excess of the Contract Capacity and attempts to sell the output of such excess capacity to SCE, and such Generating Facility Capacity is not removed within five (5) Business Days after Notice from SCE;
 - (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 is not returned within five (5) Business Days after Notice from SCE;
 - (vii) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(d);
 - (viii) Subject to Section 3.19, the Generating Facility fails to qualify as an ERR;

- (ix) Subject to Section 3.19, 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;
- (x) Seller fails to achieve Commercial Operation by the Startup Deadline in accordance with Section 2.03 and such failure is not cured within five (5) Business Days after Notice from SCE;
- (xi) A termination of any agreement necessary for Seller:
 - (1) To interconnect the Generating Facility to the Transmission Provider's electric system;
 - (2) To transmit the electric energy on the Transmission Provider's electric system; or
 - (3) To comply with the CAISO Tariff;and failure of Seller to replace such agreement on or before the applicable termination date.
- (xii) Subject to Section 3.19, 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 specified in Section 3.01; *provided*, if such failure is caused by an error or omission by Seller of an administrative or clerical nature and such failure can be cured with no harm to SCE, then if Seller has not cured such failure within thirty (30) days after Notice of the failure;
- (xiii) Seller fails to satisfy the creditworthiness and collateral requirements in Article Eight and the failure is not cured within three (3) Business Days after Notice of the failure;
- (xiv) Subject to the provisions set forth in any Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money in a principal amount in excess of Fifteen Million dollars (\$15,000,000), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
- (xv) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;

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- (xvi) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Exhibit U, if applicable as set forth in Section 3.24; or
- (xvii) Seller transfers or assigns one or both of the CAISO Queue Positions without SCE's prior written consent; *provided*, it shall not be an Event of Default if Seller transfers or assigns up to 300 MW associated with CAISO Queue Position 147.

6.02 Early Termination.

If an Event of Default shall have occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by SCE, Seller and Lender in accordance with Section 10.05.

During any period during which a Party continues to be a Defaulting Party, the Party taking the default (the "Non-Defaulting Party") shall have the right:

- (a) To designate by Notice a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date"); and
- (b) 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.

Upon the designation of an Early Termination Date, the Non-Defaulting Party shall have the right to immediately suspend performance under this Agreement, including performance under Section 3.01(f) (subject to such Non-Defaulting Party providing Notice of such suspension, which Notice will be effective one (1) Business Day after being given) but excluding the obligation to post and maintain Development Security and Performance Assurance in accordance with Section 3.04 or Article Eight.

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 (the "Termination Payment").

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

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 would owe the Defaulting Party more than the Defaulting Party would owe 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.

*** 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.

DIRECT DAMAGES SHALL INCLUDE THE VALUE OF ANY INVESTMENT TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, THAT ARE LOST BY SELLER DUE TO AN EVENT OF DEFAULT BY SCE WHERE SELLER PROVIDED NOTICE OF EARLY TERMINATION TO SCE UNDER SECTION 6.02(a) IF SELLER HAS NOT BEEN ABLE TO MITIGATE THAT LOSS AFTER USE OF REASONABLE EFFORTS.

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 (A) 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, AND (B) SHALL APPLY TO ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER ANY SUCH CLAIM IS FASHIONED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE.

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TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

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

ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS**8.01 Financial Information.**

- (a) If requested by one Party, the other Party shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
 - (i) Within one hundred-twenty (120) days following the end of each fiscal year, a copy of its and its Guarantor's, if any, annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
 - (ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its and its Guarantor's, if any, quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.
- (b) In each case, the financial statements specified in (i) and (ii) directly above must be:
 - (i) Certified in accordance with all applicable laws and regulations, including all applicable Securities and Exchange Commission ("SEC") rules and regulations, if such Party or its Guarantor is an SEC reporting company; or
 - (ii) Certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party or its Guarantor is not an SEC reporting company.
- (c) For purposes of the requirement set forth in Section 8.01(a):
 - (i) If a Party or its Guarantor's financial statements are publicly available electronically on the website of such Party, its Guarantor or the SEC, then such Party shall be deemed to have met this requirement; and
 - (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an

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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 1.08.

The Performance Assurance Amount shall be posted to SCE and maintained at all times during the Term and thereafter until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, 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 neither returned the Development Security to Seller nor given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Security by such date, *then* 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 and meeting the requirements in Section 8.02(c)(iii), 8.02(c)(iv) and 8.02(c)(v) 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 two (2) 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 first Business Day after the occurrence thereof. Upon the occurrence of a Letter of Credit Derating, 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 fifth (5th) Business Day after the occurrence thereof;
- (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 exist any unsatisfied payment obligations, *then* SCE may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by SCE from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for 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:

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- (1) Failure to provide or maintain sufficient Performance Assurance (including failure to replenish a Letter of Credit to the full Performance Assurance Amount in the event that SCE draws against the Letter of Credit for any reason other than to satisfy a Termination Payment); or
 - (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE; and
 - (v) In all cases, the costs and expenses of establishing, renewing, replenishing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit I executed by:

- (i) The Guarantor identified in Section 1.09, if any; or
- (ii) Other party that is acceptable to SCE *and* that meets the Credit Rating requirements for the Guarantor set forth immediately below.

The Guarantor shall maintain a Credit Rating of at least:

- (iii) "BBB-" from S&P if it is rated by S&P;
- (iv) "Baa3" from Moody's if it is rated by Moody's; and
- (v) "BBB-" from Fitch if it is rated by Fitch.

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, 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 all 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, an Early Termination Date resulting from an Event of Default caused by Seller, or the occurrence of an event for which this Agreement provides that SCE is authorized to retain all or a portion of the Development Security, SCE may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to the Development Security or Performance Assurance (as applicable), 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 or Performance Assurance (as applicable) 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 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of SCE with respect to the Security Interest provided for herein and therein.
- (b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral or otherwise to any party other than Lender.
- (c) Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any Disqualified Stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or Disqualified Stock issued, in connection with the financing or refinancing of the development, construction or operation of the Generating Facility.

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

- (d) Except for liens for the benefit of Lender or Permitted Liens, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person, any lien on Seller's interest (or any part thereof) in this Agreement, the Site or the Generating Facility.

Seller promptly shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Generating Facility, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Generating Facility or a material part thereof.

Seller shall promptly notify SCE of any attachment or imposition of any lien (except Permitted Liens other than liens described in paragraph (b) in the definition of Permitted Liens in excess of Two Million dollars (\$2,000,000)) against Seller's interest (or any part thereof) in the Site, the Generating Facility, or any part thereof or interest therein.

- (e) Seller shall not permit Seller's Debt to Equity Ratio to exceed the amount set forth in Section 1.10.
- (f) 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.
- (g) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
- (h) During any period during which Seller continues to be a Defaulting Party, Seller shall not:
- (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller other than to the Tax Equity Provider; or
 - (ii) Otherwise make any distribution or payment to any Affiliate of Seller, other than payments in the ordinary course of business with such Affiliate of Seller.

8.05 Uniform Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in Article Eight of this Agreement, neither Party:

- (i) Has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever; or
- (ii) Will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Eight of this Agreement;

and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines, are hereby waived.

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

ARTICLE NINE. GOVERNMENTAL CHARGES9.01 Cooperation to Minimize Tax Liabilities.

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

9.02 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Metered Amounts (and any contract associated with the Metered Amounts) arising prior to 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 Metered Amounts at and 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 such Party is exempt under the law.

9.03 Providing Information to Taxing Authorities.

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

*** End of ARTICLE NINE ***

ARTICLE TEN. MISCELLANEOUS**10.01 Representations and Warranties.**

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

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

- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement.

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

10.02 Additional Seller Representations, Warranties and Covenants.

- (a) Seller hereby covenants to SCE that throughout the Term:
- (i) Seller shall own and Operate the Generating Facility;
 - (ii) Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
 - (iii) Seller shall hold the rights to all Green Attributes, Capacity Attributes and Resource Adequacy Benefits, which Seller has conveyed and has committed to convey to SCE hereunder;
 - (iv) Seller shall obtain, maintain and remain in compliance with 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;
 - (v) Subject to Section 3.19, Seller shall take all actions necessary for the Project to qualify and be certified by the CEC as an ERR; and
 - (vi) Subject to Section 3.19, Seller shall take all actions necessary for the Product delivered to SCE to qualify under the requirements of the California Renewables Portfolio Standard.
- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:
- (i) The Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
 - (ii) The Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.

To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

- (c) The term “commercially reasonable efforts” as used in this Section 10.02 shall not require Seller to incur out of pocket expenses in excess of the Compliance Expenditure Cap in any year in order to obtain and maintain CEC Certification and Verification under the then-current Applicable Law.

- (d) In addition, Seller represents, warrants and covenants to SCE that, with respect to the Generating Facility, 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.

- (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 liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees and all amounts the other Party becomes legally obligated to pay to third party claimants, whether or not the claims of the third party are characterized as indirect or consequential) 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 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, 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 damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation and all amounts SCE becomes legally obligated to pay to third party claimants, whether or not the claims of the third party are characterized as indirect or consequential), resulting from injury or death to any person or damage to any property,

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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 in Sections 3.01 and 3.02.
- (g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations, in accordance with Section 3.27, and will indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs, attorneys fees (which shall include costs of in-house counsel) or expenses incurred by SCE arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against SCE. If Seller fully complies with the Generator Operator Obligations and Generator Owner Obligations, SCE will indemnify, defend and hold Seller harmless from and against all liabilities, damages, claims, losses, costs, attorneys fees (which shall include costs of in-house counsel) or expenses incurred by Seller for any NERC Standards Non-Compliance Penalties which are solely due to SCE's negligence in performing its role as the Scheduling Coordinator throughout the Delivery Term.
- (h) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.
- (i) If one Party is obligated under this Section 10.03 to indemnify the other Party against the claims of a third party, the amounts to be reimbursed to the indemnified Party or paid to the third party by the indemnifying Party, as the case may be, will not be deemed to be consequential damages or otherwise excluded from these indemnification obligations by reason of Article Seven.
- (j) If SCE elects to draw upon an outstanding Letter of Credit to satisfy Seller's indemnification obligations under the Agreement, then within three (3) Business Days after SCE's receipt of proceeds from the draw, Seller shall replenish the Letter of Credit in an amount equal to the amount received by

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SCE to cover the indemnification obligation. Seller's failure to timely replenish the Letter of Credit or otherwise provide replacement Performance Assurance shall be deemed an Event of Default for which SCE may exercise all of its rights and remedies under this Agreement or in law or equity.

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.
- (b) Any Change in 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 agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

- (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of such Event of Default;
- (b) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

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- (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;

- (c) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement or within another cure period agreed to by SCE, Seller and Lender in their sole discretion and specified in the Collateral Assignment Agreement;
- (d) Lender shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default;
- (e) 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;
- (f) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement);

provided that, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date; *provided, however*, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, *then* Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement;
- (g) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for

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example, a foreclosure sale where a third party is the buyer, or otherwise), *then* Lender must (unless prohibited by Applicable Law) cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer.

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

- (h) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), upon SCE's request, Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement for a time period equal to any remaining Term of the Agreement.

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

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 Sections 10.04 and 10.05.

For purposes of this Section 10.06, Seller shall have been deemed to relinquish possession and control of the Generating Facility if for a consecutive thirty (30) day period Seller has ceased all activities related to development, construction, or Operation of the Generating Facility, as applicable, and the cessation is not a result of a Force Majeure.

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. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY

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WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.08 Notices.

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

Notices (other than Forecasting, scheduling requests and curtailment requests) 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. Notices of curtailment may be oral or written and shall otherwise be made in accordance with accepted industry practices for such notices.

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 such Notice was sent out;
- (c) Notice by first class United States mail shall be deemed given two (2) Business Days after the postmarked date; and
- (d) Notice of curtailment shall be deemed given on the date and at the time provided by SCE.

Notices shall be effective on the date deemed given, unless a different date (and time, if applicable) for the Notice to go into effect is stated elsewhere in 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.

- (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. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement shall control.
- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties hereby agree that the reference shall also refer to any successor to such law, tariff or organization.
- (m) SCE has assigned a 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 Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the Bankruptcy Code.
- (p) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.
- (q) Each Party shall act in good faith in its performance under this Agreement.

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, advisors, contractors or equity owners (and in the case of Seller, Affiliates of Seller that are parties to a contract for, or that must approve Seller's expenditures or actions related to, the development, financing, construction, operation or maintenance of the Project), in each case who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To potential Lenders and investors (and their respective counsel, accountants and other advisors) with the consent of SCE, which consent shall not be unreasonably withheld; *provided*, 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

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- (2) Of Confidential Information 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 information and has agreed to keep such Confidential Information confidential;

- (iii) By SCE, 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) By SCE, to the CPUC under seal for purposes of review subject to SCE 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 or as otherwise may reasonably be required 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;
- (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 Party making a disclosure of Confidential Information (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, 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 the WREGIS or other process recognized under Applicable Laws for the registration, transfer

or ownership of Green Attributes associated with the Generating Facility;

- (x) To representatives of a Party's (and/or its Ultimate Parent's, in the case of Seller) credit ratings agencies:
 - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party (and/or its Ultimate Parent, in the case of Seller) 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 (and/or its Ultimate Parent's, in the case of Seller) financial reporting obligations;
 - (xi) Disclosure of terms specified in and pursuant to Section 10.10(c);
 - (xii) 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.

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 “Non-Disclosure Agreement”), and the termination date of that agreement is modified such that it will terminate on the later of:

- (1) The termination of the Non-Disclosure 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 Non-Disclosure Agreement, 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 Non-Disclosure Agreement, the term “Confidential Information” as used in the Non-Disclosure Agreement (and incorporated herein) shall be deemed to include (in addition to the information described in the Non-Disclosure Agreement) 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 Non-Disclosure Agreement.
- (iii) Confidential Information may only be used for the purposes set forth under the Non-Disclosure Agreement 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 Effective Date, either Party shall be permitted to disclose the following terms with respect to this Agreement:

- (i) Party names;
- (ii) ERR type;
- (iii) Term;
- (iv) Generating Facility location;
- (v) Delivery Point;
- (vi) Generating Facility’s expected energy deliveries;

- (vii) Forecasted Commercial Operation Date; and
- (viii) Contract Capacity.

10.11 Insurance.

- (a) Starting no later than thirty (30) days following the Effective Date and continuing until the Term ends, Seller shall maintain in force at its sole expense, valid and collectible insurance as described in Section 10.11(a). This insurance can only expire or be terminated or materially altered upon thirty (30) days' prior Notice to SCE.
 - (i) Workers' compensation insurance with the statutory limits required by the state of California;
 - (ii) Employer's liability insurance with no less than following limits:
 - (1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident
 - (2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
 - (3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee
 - (iii) Commercial General Liability Insurance, written on an "occurrence" basis, including products/completed operations; broad form property damage; and contractual liability. This commercial general liability insurance must bear a minimum limit per occurrence of not less than One Million dollars (\$1,000,000), exclusive of defense costs, for all coverage and must contain:
 - (1) Standard cross-liability or severability of interest provisions; and
 - (2) No explosion, collapse, or underground exclusions.If Seller elects, with SCE's written concurrence, to use a "claims made" form of commercial general liability insurance, then the following additional requirements apply:
 - (3) The retroactive date of the policy must be before the Effective Date; and

- (4) Either the policy must maintain coverage for a period of not less than four (4) years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after the Agreement terminates.
- (iv) Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars (\$1,000,000) per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles.
- (v) Excess liability insurance on a following form basis with limits of not less than Ten Million dollars (\$10,000,000) per occurrence.
- (b) The insurance required under this Section 10.11 must be maintained with insurers with an A.M. Best Company rating of A- VII or better and on forms and with deductibles reasonably acceptable to SCE in its reasonable discretion. Any other insurance carried by SCE, its officers, agents, and employees which may be applicable will be deemed to be excess insurance and Seller's insurance will be deemed primary for all purposes despite any conflicting provision in Seller's policies to the contrary. Carriers furnishing the insurance required shall be required to waive all rights of subrogation against SCE, its officers, agents, and employees. The insurance required in Section 10.11(a) must name SCE and its officers, agents and employees, as additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility. The insurance required in this Section 10.11 can be provided by any combination of Seller's primary and excess liability policies.
- (c) Within thirty (30) days of the Effective Date, Seller shall provide SCE with copies of certificates of insurance in forms reasonably acceptable to SCE, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 10.11 and that these policies will be in full force and effect as of the Effective Date and continuing until the end of the Term.
- (d) If any of the insurance coverages required in this Section 10.11 contain aggregate limits applying to other operations of Seller outside of the Agreement, and these limits are diminished by any incident, occurrence, claim, settlement or judgment against the insurance, Seller shall take immediate steps to restore the aggregate limits or shall provide other insurance protection for the aggregate limits.

- (e) If Seller fails to comply with any of the provisions of this Section 10.11, Seller shall, at its own cost, defend, indemnify and hold harmless SCE, its officers, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that SCE would have been protected had Seller complied with all of the provisions of this Section. Nothing in this Section 10.11(e) affects or diminishes Seller's obligation to indemnify SCE under any other section of this Agreement.

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.

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

10.16 Provisional Relief.

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 seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 2.05(b), 3.01, 3.02, 3.04(f), or 10.10 of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 12.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a 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, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for 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.

10.17 Seller Ownership and Control of Generating Facility.

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

10.18 Required Material.

Seller acknowledges and agrees that, notwithstanding anything to the contrary set forth herein, any review, approval, request, or requirement of any Required Material shall mean only that such Required Material is acceptable to SCE solely for SCE's internal purposes and benefit, and shall not in any way be construed to mean that such Required Material is accurate, suitable for its intended purpose, in compliance with any Applicable Law or other requirement, or endorsed for the benefit of any other party, including Seller. Further, Seller acknowledges and agrees that SCE shall have

no liability to Seller or any other third party with respect to any Required Material so reviewed, approved, requested or required by SCE or on SCE's behalf.

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

ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN

If a Change in CAISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, *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, 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.

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

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

Other than requests for provisional relief under Section 10.16, and for disputes under Section 3.04(c)(i)(2), which may be submitted directly to final and binding arbitration under Section 12.03, 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, 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, or with respect to a Dispute under Section 3.04(c)(i)(2), by providing the Notice in accordance with Section 10.08 within fourteen (14) days after SCE's determination that Initial Synchronization will not occur and where SCE's determination is not based upon an Event of Default as to Seller occurring prior to the Startup Deadline.

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.

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

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- (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 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(f), or 10.10 of this Agreement.

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 ****

Southern California Edison

Confidential Information

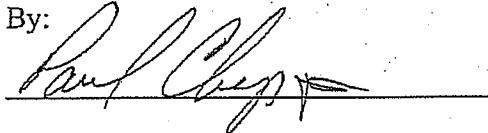
RAP ID# 5217, Desert Sunlight LLC

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

DESERT SUNLIGHT LLC

a Delaware limited liability company.

By:



Paul Champagne

VP Business Development

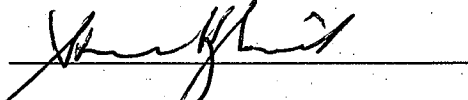
Date:

August 13, 2009

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation.

By:

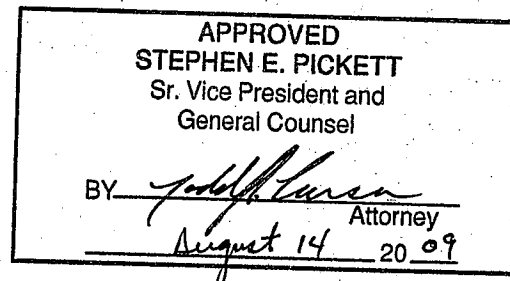


Stuart R. Henphill

*Sr. Vice President,
Power Procurement Business Unit*

Date:

8/17/09



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. “AC” means alternating current electric energy.
2. “Accepted Compliance Costs” has the meaning set forth in Section 3.19.
3. “Actual Availability Report” means a report to be prepared by Seller in the form of Exhibit S containing the information described in Section 3.23.
4. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with such Party.
5. “Agreement” has the meaning set forth in the Preamble.
6. “Annual Energy Yield Factor” means the annual AC energy in kWh that is expected to be delivered to SCE per installed peak DC power in kW_{PDC} of Photovoltaic Modules.
7. “Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
8. “Arbitrator” has the meaning set forth in Article Twelve.
9. “Availability” means either:
 - (a) Capacity, in MWs; or
 - (b) Energy, in MWh, of the Generating Facility,
required to be Forecast in accordance with the CAISO Tariff.
10. “Availability Forecast” has the meaning set forth in Exhibit D.
11. “Availability Workbook” has the meaning set forth in Exhibit S.
12. “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

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- commenced against it and the entity does not succeed in having this petition filed or commenced against it dismissed within forty five (45) days in spite of a diligent, good faith effort to do so;
- (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 such entity or any substantial portion of its property or assets; or
 - (e) Is generally unable to pay its debts as they fall due.
13. “Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*), as amended, and any successor statute.
14. “BLM” has the meaning set forth in Section 1.01(g)(ii)(2).
15. “BLM Permit” has the meaning set forth in Section 1.01(g)(ii)(2).
16. “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.
17. “Buyer” means Southern California Edison Company.
18. “CAISO” means the California Independent System Operator Corporation or successor entity.
19. “CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy produced by the Generating Facility less Station Use.
20. “CAISO Charges” means the credits and other payments, debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.
21. “CAISO Controlled 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.

22. “CAISO Declared Over-Generation Condition” means a CAISO declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
23. “CAISO Forecasted Over-Generation Condition” means a CAISO forecasted condition on the CAISO Controlled Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
24. “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO Approved Meter.
25. “CAISO Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.11.
26. “CAISO Sanction” means any sanction directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
27. “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.
28. “Calculation Period” has the meaning set forth in Section 3.05(a)(i).
29. “California Renewables Portfolio Standard” means the California Public Utilities Code Section 399.11, *et seq.*
30. “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 throughout the Delivery Term; *provided*, that Capacity Attributes shall not include any state, local and/or federal production tax credit, tax deduction, investment tax credit, accelerated depreciation, investment or financing grant or guarantee, and/or other similar tax or related attribute.
31. “CEC” means the California Energy Commission.
32. “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.
33. “CFR” means the Code of Federal Regulations, as may be amended from time to time.
34. “Change in CAISO Tariff” means that, after the Effective Date, the CAISO Tariff has been changed and such change has a material adverse 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 in effect on the Effective Date.
35. “Change in Control” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, that in calculating ownership percentages for all purposes of the foregoing:
- (a) Any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
 - (b) Ownership interests in Seller owned directly or indirectly by any Tax Equity Provider or other Lender shall be excluded from the total outstanding equity interests in Seller.
36. “Check Meter” means the SCE revenue-quality meter section or meter, which SCE may require at its discretion, as set forth in Section 3.06(b).
37. “Claimed Capacity” has the meaning set forth in Section 3.13.
38. “Claiming Party” has the meaning set forth in Section 5.02.
39. “Collateral Assignment Agreement” has the meaning set forth in Section 10.05.
40. “Commercial Operation” has the meaning set forth in Section 2.03(b).
41. “Commercial Operation Date” has the meaning set forth in Section 2.03(b).
42. “Compliance Actions” has the meaning set forth in Section 3.19.
43. “Compliance Expenditure Cap” has the meaning set forth in Section 3.19.
44. “Confidential Information” has the meaning set forth in Section 10.10(b)(ii).

45. “Contract Capacity” means the electric energy generating capacity set forth in Section 1.01(g).
46. “Control” (and its corollary terms “Controlled”, “Controlling” and “Controls”) means, with respect to any entity, the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power in such entity; provided that for purposes of determining the control of Seller, the capital stock or other equity interests or rights held by any Lender shall not be taken into account.
47. “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.
48. “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.
49. “CPUC” means the California Public Utilities Commission.
50. “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and
 - (b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.
- CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
51. “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, Fitch or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligation by S&P, Fitch or Moody’s,

- then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by the other two ratings agencies.
52. “Cross Default Amount” means the dollar amount set forth in Section 1.09(c).
53. “Cumulative Percentage of Installed Capacity” has the meaning set forth in Exhibit R.
54. “Current Inverters” means devices used to convert direct current (“DC”) electric energy to alternating current (“AC”) electric energy.
55. “Daily Delay Liquidated Damages” has the meaning set forth in Section 3.04(c)(ii).
56. “DC” means direct current electric energy.
57. “DC Collection System” means the DC equipment, cables, components, devices and materials that interconnect the Photovoltaic Modules with the Current Inverters.
58. “Defaulting Party” has the meaning set forth in Section 6.01.
59. “Delivery Losses” means all electric energy losses occurring between the CAISO Approved Meter or the Check Meter and the Delivery Point and electric energy losses occurring over the CAISO Controlled Grid as such losses are assigned by the CAISO to the Generating Facility including, if applicable:
- (a) If the CAISO Approved Meter or Check Meter is not installed on the high voltage side of the Generating Facility’s substation bus bar, transformer and other electric energy losses occurring between the CAISO Approved Meter or Check Meter and the high voltage side of the Generating Facility’s substation bus bar; and
 - (b) Any applicable DLF, or if no DLF is applicable, *then* electric energy losses between the high voltage side of the Generating Facility’s substation bus bar and the CAISO Controlled Grid.
60. “Delivery Loss Factor” means the percentage that adjusts the Metered Amounts to reflect the applicable Delivery Losses.
61. “Delivery Point” means the PNode for the Generating Facility.
62. “Delivery Term” means the period beginning with Initial Synchronization and continuing through the end of the Term.
63. “Demonstrated Capacity” has the meaning set forth in Exhibit R.
64. “Demonstration Period” has the meaning set forth in Exhibit R.

65. “Development Security” has the meaning set forth in Section 3.04.
66. “Disclosing Party” has the meaning set forth in Section 10.10.
67. “Disclosure Order” has the meaning set forth in Section 10.10.
68. “Dispute” has the meaning set forth in Article Twelve.
69. “Disqualified Stock” means any capital stock that, by its terms (or by the terms of any security into which such stock is convertible, or for which such stock is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety one (91) days after the expiration of the Term of this Agreement.
70. “DLF” means a number that is a representation for all net electric energy losses or avoided losses as determined by the CPUC associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility’s substation bus bar to the interface with the CAISO Controlled Grid, also known as the distribution loss factor.
71. “Early Termination Date” has the meaning set forth in Section 6.02.
72. “Effective Date” has the meaning set forth in the Preamble.
73. “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.
74. “Energy Communication Network” means the CAISO infrastructure network (data highway) used by all CAISO participants to exchange data to and from resources and CAISO.

75. “Energy Deviations” means the absolute value of the difference, in kWh, in any Settlement Interval between:
- (a) The Final Hour-Ahead Schedule for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and
 - (b) Settlement Amounts for the Settlement Interval.
76. “Energy Payment” has the meaning set forth in Section 4.01(a)(ii).
77. “Energy Payment Allocation Factor” has the meaning set forth in Exhibit K.
78. “Energy Price” means the energy price set forth in Section 1.07.
79. “Energy Replacement Damage Amount” has the meaning set forth in Section 3.05(b).
80. “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.
81. “ERR” has the meaning set forth in Section 10.02(b)(i).
82. “Event of Default” has the meaning set forth in Section 6.01.
83. “Event of Deficient Energy Deliveries” means any instance in which Seller fails to meet Seller’s Energy Delivery Obligation as determined in accordance with Section 3.05(a)(ii), which failure results in Seller’s obligation to pay the applicable Energy Replacement Damage Amount.
84. “Existing Zone Generation Trading Hub” has the meaning as set forth in the CAISO Tariff.
85. “Expected Annual Net Energy Production” means the Generating Facility’s expected annual Qualified Amounts set forth in Section 1.01(i).
86. “EZ Gen Hub SP-15” means the Existing Zone Generation Trading Hub for the geographical area in which the majority of SCE’s service territory is located.
87. “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.
88. “Federal Investment Tax Credit Legislation” means validly enacted federal legislation providing for ITC on terms no less favorable to owners of solar generating facilities than those available with respect to such facilities placed in service on or after

- January 1, 2009 and before January 1, 2017 pursuant to the law governing Investment Tax Credits as in effect on May 1, 2009.
89. “FERC” means the Federal Energy Regulatory Commission.
90. “Final Demonstrated Contract Capacity” has the meaning set forth in Exhibit L.
91. “Final Hour-Ahead Schedule” has the meaning as set forth in the CAISO Tariff.
92. “Final Schedule” has the meaning as set forth in the CAISO Tariff.
93. “Final Test” means SCE’s determination of the Final Demonstrated Contract Capacity in accordance with Paragraph 3a of Exhibit L.
94. “Firm Operation Date” has the meaning set forth in Section 1.05, as such date may be extended under Section 1.05 or 5.04.
95. “Fitch” means Fitch Ratings Ltd. or its successor.
96. “Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:
- (a) In whole or in part:
 - (i) Delays a Party’s performance under this Agreement;
 - (ii) Causes a Party to be unable to perform its obligations; or
 - (iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
 - (b) Is not within the control of 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 (including a change in Applicable Law except as set forth in Section 3.19), or curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO (except as set forth in subparagraph (f) directly below) *provided that*, the basis of such curtailment or reduction is not an event caused by the Party claiming Force Majeure.

- 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 Controlled Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.
97. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting to SCE, in accordance with Exhibit D, the Availability Forecasts.
98. "Forecasted Commercial Operation Date" means the date Seller anticipates, as of the Effective Date, will be the date for Commercial Operation Date, as set forth in Section 1.03.
99. "Forecasted Initial Synchronization Date" means the date Seller anticipates, as of the Effective Date, Seller will achieve Initial Synchronization, as set forth in Section 1.02, subject to Seller's right to change such date pursuant to Section 3.16.
100. "Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.
- If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party.
- If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars (\$0).
- The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.
101. "GAAP" means generally accepted accounting principles.
102. "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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, 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 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.

103. “Gen-Tie Line” means the equipment and facilities comprising the approximately 10-mile 230 kV proposed transmission line from the Generating Facility to the Interconnection Point that will be built, owned and maintained by Seller or Seller’s Affiliate.
104. “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.
105. “Generating Facility Capacity” means the Generating Facility’s total rated electric AC energy generating capacity determined as the lesser of:
- (a) The sum of the Inverter Block Unit Capacities of all Inverter Block Units included in the Generating Facility; or
 - (b) The continuous output power rating of the step-up transformer that connects the Generating Facility to the Transmission Provider’s system.
106. “Generating Facility Energy Yield Curve” means a table used to estimate the Generating Facility’s Metered Amounts, in kWhs, as a function of the recorded solar insolation, in kWh per square meter, at the Site as described in Exhibit M.
107. “Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor the Generating Facility.
108. “Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.

109. “Generator Operator” means the entity that Operates the Generating Facility and performs the functions of supplying energy and interconnected operations services as described in the Statement of Compliance Registry Criteria at <http://www.wecc.biz>.
110. “Generator Operator Obligations” means the obligations of a Generator Operator as set forth in the applicable NERC Reliability Standards available at <http://www.wecc.biz>.
111. “Generator Owner” means an entity that owns the Generating Facility and has registered with NERC as the entity responsible for complying with those NERC reliability standards applicable to owners of generating units as described in the Statement of Compliance Registry Criteria at <http://www.wecc.biz>.
112. “Generator Owner Obligations” means the obligations of a Generator Owner as set forth in the applicable NERC Reliability Standards available at <http://www.wecc.biz>.
113. “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.
114. “Governmental Charges” has the meaning as set forth in Section 9.02.
115. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:
 - (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
 - (2) 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;¹

- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

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

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to

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

- ensure that there are zero net emissions associated with the production of electricity from the Project.
116. “Guarantor” has the meaning set forth in Section 1.09.
117. “Guaranty Agreement” means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
118. “Incremental Test” means SCE’s determination of the Demonstrated Capacity pursuant to Exhibit R.
119. “Increment” means an Inverter Block Unit.
120. “Initial Synchronization” means the first Inverter Block Unit of the Generating Facility is synchronized with Seller’s Transmission Provider and the first kWh of electric energy is measured by the CAISO Approved Meter.
121. “Initial Synchronization Date” means the date upon which Initial Synchronization occurs.
122. “Installed DC Rating” means, at any time, the sum of the Photovoltaic Module DC Ratings for all Photovoltaic Modules actually installed at the Site and verified by SCE pursuant to Exhibit L, expressed in kW_{PDC}.
123. “Interconnection Deadline” has the meaning set forth in Section 2.04(b)(i).
124. “Interconnection Point” means the location where the Generating Facility first interconnects with the existing electrical transmission or distribution system, as reported on the Generating Facility’s application for interconnection with the Transmission Provider’s electric system.
125. “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.
126. “Interest Rate” means, for any date:
- (a) The per annum rate of interest equal to the “Prime Rate” published in *The Wall Street Journal* under “Money Rates” or such date (or if not published on such date on the most recent preceding day on which published); plus

- (b) Two percentage points (2%);
- provided*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
127. “Inverter Block Unit” means each Current Inverter installed on the Site as part of the Generating Facility, along with the associated DC Collection Systems and Photovoltaic Modules connected to such Current Inverter.
128. “Inverter Block Unit Capacity” means, with respect to each Inverter Block Unit, the total rated electric AC energy generating capacity of such Inverter Block Unit, determined as the lesser of:
- (a) The manufacturer’s output rating of the Current Inverter included in such Inverter Block Unit, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplate physically attached to such Current Inverter;
 - (b) The sum of the manufacturer’s nameplate ratings of all Photovoltaic Modules included in such Inverter Block Unit, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to such individual Photovoltaic Modules; or
 - (c) The continuous power output rating of the Inverter Block Unit’s medium voltage transformer.
129. “Investment Tax Credit” or “ITC” means investment tax credits under Section 48 of the Internal Revenue Code as in effect from time-to-time or any successor or other provision providing for a federal tax credit determined by reference to capital investment in equipment used to produce renewable electric energy from solar energy resources for which Seller, as the owner of the Generating Facility, is eligible.
130. “ITC Expiration Date” means the last date on which a solar energy facility can be placed in service and qualify for ITC under Federal Investment Tax Credit Legislation.
131. “JAMS” has the meaning set forth in Article Twelve.
132. “kW” means a kilowatt of electric energy generating capacity.
133. “kWh” means a kilowatt-hour of electric energy.
134. “kW_{PDC}” means peak DC power.

135. “Large Generator Interconnection Agreement” or “LGIA” means the interconnection agreement executed between Seller, the CAISO and SCE.
136. “Lease” means one or more agreements whereby Seller leases the Site(s) described in Section 1.01(b) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
137. “Lender” means any Tax Equity Provider or any financial institution(s) or successor(s) in interest or assignees that provide(s) development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.
138. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and from an issuer acceptable to SCE that is either 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 Fitch and “A3” from Moody’s, substantially in the form of Exhibit N and acceptable to SCE. All Letter of Credit costs shall be borne by Seller.
139. “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:
- (a) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - (b) 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;
 - (c) Such Letter of Credit fails or ceases to be in full force and effect at any time;
 - (d) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates; or
 - (e) 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.
140. “Letter of Credit Derating” means the issuer of a Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and Fitch and “A3” by Moody’s, *provided that*, no Letter of Credit Derating 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.

141. “Lien” means any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever.
142. “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.
143. “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

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

144. “Lost Output” means the reduction in Qualified Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit M, but was not delivered due to:
- (a) Force Majeure;
 - (b) A default or an Event of Default where SCE is the defaulting Party; or

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

- (c) A curtailment or reduction of deliveries ordered or caused by the CAISO, or SCE acting as a Transmission Provider (including without limitation a curtailment or reduction that does not constitute a Force Majeure as provided in subparagraph (f) of the definition of Force Majeure).
145. “Lost Output Report” means the monthly report of Lost Output in the form of the worksheet from the Lost Output Workbook prepared in accordance with the procedures set forth in Section 3.21 and Exhibit M.
146. “Lost Output Workbook” has the meaning set forth in Exhibit M.
147. “Market Price” means the CAISO price for EZ Gen Hub SP-15 or any successor price that represents the Integrated Forward Market weighted-average price paid to generating facilities in that existing zone, as such price or successor price is defined in Appendix A of the CAISO Tariff that would apply to the Generating Facility, which values are, as of the 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.
148. “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). The Parties acknowledge that the Market Price Referent applicable to this Agreement will be the referent adopted by the CPUC in 2008 for a twenty (20) year agreement based on the year of Commercial Operation.
149. “Material Permits” means all permits required for Initial Synchronization of the Generating Facility, including the BLM Permit.
150. “Mediator” has the meaning set forth in Article Twelve.
151. “Meteorological Equipment” has the meaning set forth in Section 3.06(g).
152. “Metered Amounts” means the electric energy produced by the Generating Facility (including any portion of the Generating Facility installed in Increments under Section 3.13) and expressed in kWh, as measured by the CAISO Approved Meter or Check Meter if the CAISO Approved Meter is not functioning properly.
153. “Metered Capacity” has the meaning set forth in Exhibit R.
154. “Meter Service Agreement” has the meaning set forth in the CAISO Tariff.

155. “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.
156. “Monthly Demonstration” has the meaning set forth in Exhibit R.
157. “Moody’s” means Moody’s Investor Services, Inc.
158. “MW” means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
159. “MWh” means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
160. “NERC” means the North American Electric Reliability Council, or any successor thereto.
161. “NERC Reliability Standards” means the NERC Statement of Compliance Registry Criteria (Revision 5.0), which is, as of the Effective Date, available at <http://compliance.wecc.biz/Application/Documents/EntityRegistration/20081022%20-%20RegistryCriteria5.0.pdf>.
162. “NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by the NERC, CAISO, WECC, a Governmental Authority or any entity acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.
163. “Non-Defaulting Party” has the meaning set forth in Section 6.02.
164. “Non-Disclosure Agreement” has the meaning set forth in Section 10.10(b)(i).
165. “Notice” means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
166. “Notice of Completed Installation” means a Notice from Seller to SCE describing (with reference to Exhibit B) the portion of the Generating Facility Capacity installed as of the immediately prior month and specifying the increment of Contract Capacity attributable to this portion of the Generating Facility.
167. “Notice of Planned Installation” means a Notice from Seller to SCE describing the portion of the Generating Facility Capacity that Seller plans to install during the next month and specifying the increment of Contract Capacity attributable to this portion of the Generating Facility; *provided* that in the case of the first such Notice delivered hereunder pursuant to Section 3.13, such Notice shall describe the entire portion of the Generating Facility Seller plans to have installed through the end of the next month.

168. “OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data or its successor.
169. “Operate,” “Operated”, “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, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
170. “Other Facility” has the meaning set forth in Section 1.01(g)(ii)(2).
171. “Other Seller” has the meaning set forth in Section 1.01(g)(ii)(2).
172. “Outage Schedule” has the meaning set forth in Section 3.15.
173. “Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.
174. “Participating Intermittent Resource” means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the CAISO Tariff.
175. “Participating Intermittent Resource Program” or “PIRP” means the CAISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the California CAISO Tariff in Docket No. ER02-922-000 or any successor program that SCE determines accomplishes a similar purpose.
176. “Party” or “Parties” have the meaning set forth in the Preamble.
177. “Performance Assurance” means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.08) for Seller’s performance under this Agreement in the form of either cash, Letter(s) of Credit, or guaranty acceptable to SCE.
178. “Performance Assurance Amount” means the collateral amount for Performance Assurance set forth in Section 1.08.
179. “Performance Tolerance Band” has the meaning set forth in Exhibit Q.
180. “Permit Approval” means approval by the relevant regulatory agencies of any Permit and shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by the pendency of an appeal or other post issuance challenge to the issuance of the Permit.

181. “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 Forecast or deliver the electric energy produced by the Generating Facility to SCE.
182. “Permitted Lien” means:
- (a) Liens imposed by any Governmental Authority for any taxes, assessments or other charges that are not delinquent or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted;
 - (b) Liens arising out of court judgments or arbitral awards, so long as an appeal or proceeding for review is being prosecuted in good faith and adequate reserves, as required by GAAP, bonds or other security have been provided, or such judgments or awards are fully covered by insurance;
 - (c) Non-monetary Liens incident to the ordinary course of business that do not in the aggregate materially impair the use or value of the property or assets in question;
 - (d) Liens in favor of SCE arising under or in connection with this Agreement;
 - (e) Liens in favor of the Lenders to secure construction or term financing for the Generating Facility;
 - (f) Mechanics’ and materialmen’s Liens arising in the ordinary course of business for amounts not yet due or for which a bond, letter of credit or other security has been posted; and
 - (g) Carriers’, warehousemen’s, suppliers’ or other similar Liens arising in the ordinary course of business for amounts not yet due or for which a bond, letter of credit or other security has been posted.
183. “Photovoltaic Module” means the individual module that produces DC electric energy from sun light.
184. “Photovoltaic Module DC Rating” means, for each Photovoltaic Module installed or to be installed at the Site, the number (expressed in kW_{PDC}) stated on the nameplate affixed thereto representing the manufacturer’s maximum (at “peak” sunlight) DC power rating at the standard test condition (“P_{mp}” or Power maximum at peak). The Photovoltaic Module DC Rating for Photovoltaic Modules to be installed at the Site is indicated in Exhibit B.

185. “PNode” has the meaning set forth in the CAISO Tariff.
186. “Product” means:
- (a) All electric energy produced by the Generating Facility (including any portion of the Generating Facility installed in increments under Section 3.13), net of Station Use; and
 - (b) All Green Attributes, Capacity Attributes, and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility (including any portion of the Generating Facility installed in increments under Section 3.13).
187. “Project” means the Generating Facility.
188. “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 are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
189. "Qualified Amounts" means the Metered Amounts, expressed in kWh, that either
- (a) Qualify as eligible renewable energy for purposes of the RPS Legislation; or
 - (b) Do not so qualify solely because, despite Seller's commercially reasonable efforts as defined in Section 10.02(c), the Project's output no longer qualified as eligible renewable energy for purposes of the RPS Legislation due to a change in law after the Effective Date.
190. "Quarterly Facility Status Report" or "QFSR" has the meaning set forth in Exhibit O.
191. "RAP ID" has the meaning set forth in Section 10.08.
192. "Real-Time Availability" has the meaning set forth in Section 3.06(h).
193. "Renewable Energy Credit" or "REC" has the meaning set forth in CPUC Decision D.08-08-028, as such definition may be modified by the CPUC or Applicable Law from time to time.
194. "Required Material" means any permit, license, application, certification, design, specification, program, agreement, instrument, equipment, device, mechanism, or any other item in connection with the Generating Facility to be reviewed or approved by SCE or on SCE's behalf, or requested or required of Seller by SCE or on SCE's behalf, under this Agreement.
195. "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.
196. “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, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time.
 197. “Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing.
 198. “Restricted Period” has the meaning set forth in Section 2.05(b).
 199. “ROD” has the meaning set forth in Section 1.01(g)(ii)(2).
 200. “RPS Legislation” means the State of California Renewable Portfolio Standard Program.
 201. “S&P” means the Standard & Poor’s Rating Group.
 202. “SC Schedules” means the amounts initially submitted to the CAISO by SCE, as Scheduling Coordinator for Seller, of expected electric energy that Seller expects to deliver in each hour.
 203. “SCE” has the meaning set forth in the Preamble.
 204. “SCE Penalty” means the amount charged to Seller by SCE, in accordance with Exhibit Q, for hours in a calendar month when Seller does not accurately provide availability information as set forth in Exhibit D.
 205. “SCE’s Projected Energy Forecast” has the meaning set forth in Exhibit D.
 206. “Schedule,” “Scheduled” or “Scheduling” means the action of SCE in submitting SC Schedules to the CAISO and receiving the Final Schedules from the CAISO, as such terms are defined in the CAISO Tariff.
 207. “Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
 208. “SEC” has the meaning set forth in Section 8.01(b)(i).
 209. “Security Interest” has the meaning set forth in Section 8.03.

210. “Seller” has the meaning set forth in the Preamble.
211. “Seller’s Debt” means, without duplication, each of the following:
- (a) All indebtedness of Seller for borrowed money;
 - (b) All obligations of Seller for the deferred purchase price of property or services which purchase price is due more than six months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business);
 - (c) All obligations of Seller evidenced by notes, bonds, debentures, Disqualified Stock or other similar instruments;
 - (d) All obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);
 - (e) All monetary obligations of Seller under:
 - (i) A lease of any property (whether real, personal or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller;
 - (ii) A so-called synthetic, off-balance sheet or tax retention lease; or
 - (iii) An agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment);
 - (f) All obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities;
 - (g) All obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
 - (h) All obligations of Seller with respect to any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations,

either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value;

- (i) All indebtedness of others referred to in clauses (a) through (h) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement:
 - (i) To pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness;
 - (ii) To purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss;
 - (iii) To supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered); or
 - (iv) Otherwise to assure a creditor against loss; and
- (j) Without duplication of the foregoing, all indebtedness referred to in clauses (a) through (i) above secured by any lien on property (including accounts and contract rights) owned by Seller.

The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation.

Notwithstanding the foregoing, the term “Seller’s Debt” as used herein shall not include Seller’s obligations under this Agreement and the Lease (*provided that* such Lease does not constitute an obligation of Seller described in clause (e) of the first sentence of this definition).

212. “Seller’s Debt Percentage” means the quotient, expressed as a percentage, equal to:

- (a) Seller’s Debt divided by
- (b) Seller’s Debt plus Seller’s Equity,

as set forth in Section 1.10.

213. “Seller’s Debt to Equity Ratio” means the ratio of Seller’s Debt Percentage to Seller’s Equity Percentage.

214. “Seller’s Energy Delivery Obligation” has the meaning set forth in Section 3.05(a)(i).
215. “Seller’s Equity” means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with GAAP.
216. “Seller’s Equity Percentage” means the quotient, expressed as a percentage, equal to:
- (a) Seller’s Equity divided by
 - (b) Seller’s Debt plus Seller’s Equity,
- as set forth in Section 1.10.
217. “Settlement Amounts” means the Metered Amounts adjusted by Delivery Losses.
218. “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
219. “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all Current Inverters of the Generating Facility that were available at the end of such Settlement Interval, as indicated by the Actual Availability Report.
220. “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.
221. “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.
222. “Site Control” has the meaning set forth in Section 3.07(a).
223. “Solar Property Tax Exemption” means the property tax exemption granted to owners of qualified solar energy systems under California Revenue and Taxation Code § 73, or any successor legislation.
224. “Solar Resource Evaluation Report” means a final report concerning the electric energy producing potential of the Site prepared by an independent engineer which assesses the solar resource potential at the Site.
225. “Startup Deadline” has the meaning as set forth in Section 1.04.

226. “Startup Payment” has the meaning set forth in Section 4.01(a)(i).
227. “Startup Period” means the period that begins upon Initial Synchronization and ends upon Commercial Operation.
228. “Station Use” means:
- (a) The electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; and
 - (b) The electric energy produced by the Generating Facility that is consumed within the Generating Facility’s electric energy distribution system as losses.
229. “Supplemental Lost Output” has the meaning set forth in Section 3.21(b).
230. “Supplemental Lost Output Report” has the meaning set forth in Section 3.21(b).
231. “Tax Equity Provider” means any person or successor in interest or assignee that provides financing or refinancing for the Generating Facility to the Seller and whose return is substantially derived from tax attributes, including interest deductions, accelerated depreciation and ITCs, in respect of the ownership interest in the Generating Facility.
232. “Telemetry System” means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO’s applicable requirements as set forth in Sections 3.06(f) and 3.06(h).
233. “Term” has the meaning used in Section 1.06.
234. “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.
235. “Termination Payment” has the meaning set forth in Section 6.03.
236. “TOD Period(s)” means the time of delivery period(s) set forth in Exhibit K.
237. “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(b).
238. “Total Project’s Interconnection Costs” means the sum of all costs for:
- (a) Direct Assignment Facilities (as defined in the LGIA(s)) payable by Seller and/or the Other Seller under their respective LGIAs in order to interconnect

the Facility and the Other Facility, and in any event includes the costs of all equipment and facilities to be installed between the high-sides of the step-up transformers at the Seller's and the Other Seller's respective generating facilities and the "Points of Interconnection" under their respective LGIAs; and

- (b) Any additional costs for the Gen-Tie Line solely and directly attributable to changes in the design and construction standards for the Gen-Tie Line, if any, required by SCE, BLM or other lead permitting agency;

and shall not include any costs for the Transformer and any income tax component of contribution, or ITCC, that may be assessed to Seller by the Transmission Provider.

239. "Total Project's Network Upgrades Costs" means the total of all costs for network upgrades payable or reimbursable by Seller and/or the Other Seller under their respective LGIAs in order to interconnect the Facility and the Other Facility .
240. "Transformer" means the equipment and facilities that comprise the 500/230 kV transformer that will transform the low-side voltage (230 kV) of the Gen-Tie Line to the high-side voltage (500 kV) of the Interconnection Point.
241. "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.
242. "Ultimate Parent" means, as of the Effective Date, First Solar, Inc., and following the Effective Date, any successor(s) to First Solar, Inc. approved by SCE under the provisions of Section 10.04(b).
243. "Unincluded Capacity" has the meaning set forth in Section 3.04(e).
244. "Uninstructed Imbalance Energy" has the meaning set forth in the CAISO Tariff.
245. "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
246. "Web Client" shall have the meaning set forth in Section 3.15.
247. "WREGIS" has the meaning set forth in Section 3.01(d)(iv).

*** End of EXHIBIT A ***

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

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 Generating Facility will produce renewable electric power through the application of fixed tilt position, ground-mounted Photovoltaic Modules manufactured by First Solar, Inc. or its Affiliate.

Each Photovoltaic Module is 120 centimeters by 60 centimeters, operates at 71 volts at maximum power, and produces approximately 80 watts of DC electric power. As of the Effective Date, and subject to reduction as set forth in this Agreement, the Generating Facility will consist of two hundred fifty (250) standard one (1) MW solar arrays with each array consisting of two (2) 500 kW Inverter Block Units. Each Inverter Block Unit will consist of 7,620 Photovoltaic Modules.

No. of Inverter Block Units	Photovoltaic Modules per Inverter Block Unit
500	7,620

The combined DC electric power output from a group of Photovoltaic Modules will be directed through a DC power collection system to a Current Inverter. The Generating Facility will use five hundred (500) 315 volt Current Invertors.

The AC electric power from each Current Inverter will then be directed to a step-up transformer with a 34.5 kV high side rating to create an Inverter Block Unit.

The medium voltage AC electric power generated by each Inverter Block Unit will then be collected through an underground cabling system and medium voltage electric switchgear, and then directed to the Transmission Provider’s electric system through an electrical switchyard and step-up transformer. The onsite substation will step up the voltage to 230 kV.

A ten (10) mile, 230 kV transmission line will be built from the Generating Facility to a new substation to be constructed by SCE on the Devers-Palo Verde transmission corridor.

The Generating Facility will normally be unmanned, and operated and continuously monitored from a remote location.

Technicians will visit the Generating Facility on a regular basis in order to monitor and maintain its systems and equipment, systems, control systems and features, including a site plan drawing and an electrical one-line diagram.

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

2. Site Description.

Prior to being purchased by First Solar, Inc., OptiSolar Inc. requested a right-of-way grant to construct and operate a solar photovoltaic (PV) energy generating facility on federal lands managed by the U.S. Department of Interior, Bureau of Land Management out of the BLM Palm Springs-South Coast field office. The coordinates are Latitude 33° 50' 19.46" N and Longitude 115° 23' 35.8" W. The current site is a total of 2,319 acres.

The Site consists of a main area for the Generating Facility, an onsite substation and a Gen-Tie Line to the point of interconnection. The main area for the Generating Facility is located approximately six (6) miles north of I-10 and the community of Desert Center. The current location for the Gen-Tie Line extends from the substation located within the main area for the Generating Facility to the south approximately ten (10) miles. At the southern end of the Gen-Tie Line SCE proposes to construct a new substation in the Devers-Palo Verde transmission corridor.

3. Legal Description.

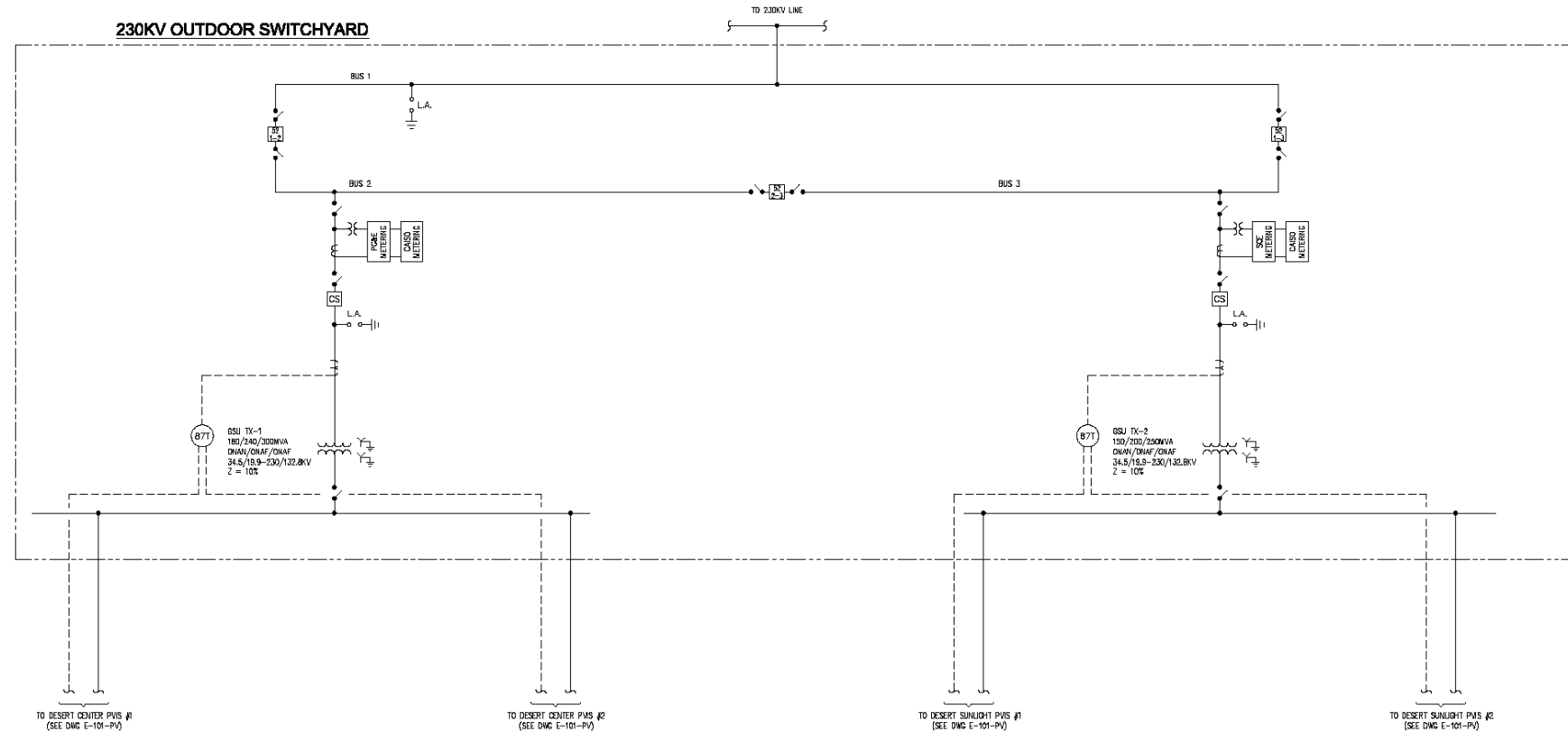
The main area of the Generating Facility is located in the sections east of Kaiser Road, in Township 4 South, Range 15 East, San Bernardino Base and Meridian as detailed below:

Township Range and Section	
T 4S, R 15E	
Section 3	W ½
Section 4	S ½, SE ¼
Section 9	All
Section 10	All
Section 15	All



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

- NOTES:**
1. THIS DRAWING REPRESENTS ONE PROPOSED ARRANGEMENT AND IS SUBJECT TO CHANGE BASED UPON THE DETAILED DESIGN.
 2. FOR LEGEND AND SYMBOLS, SEE DWG. NO. E-101-PV.



MAIN ONE LINE DIAGRAM
230KV OUTDOOR SWITCHYARD - (SH 1)
 SCALE: N.T.S.

B	08-16-09	GENERAL REVISIONS	MJA	AP	BR
A	05-19-09	FOR INFORMATION ONLY	MJA	EC	TZ
REV	DATE	REVISION DESCRIPTION	BY	CHK	APP

DESERT CENTER/SUNLIGHT

PROJECT: 300 MW-AC SOLAR PHOTOVOLTAIC SYSTEM

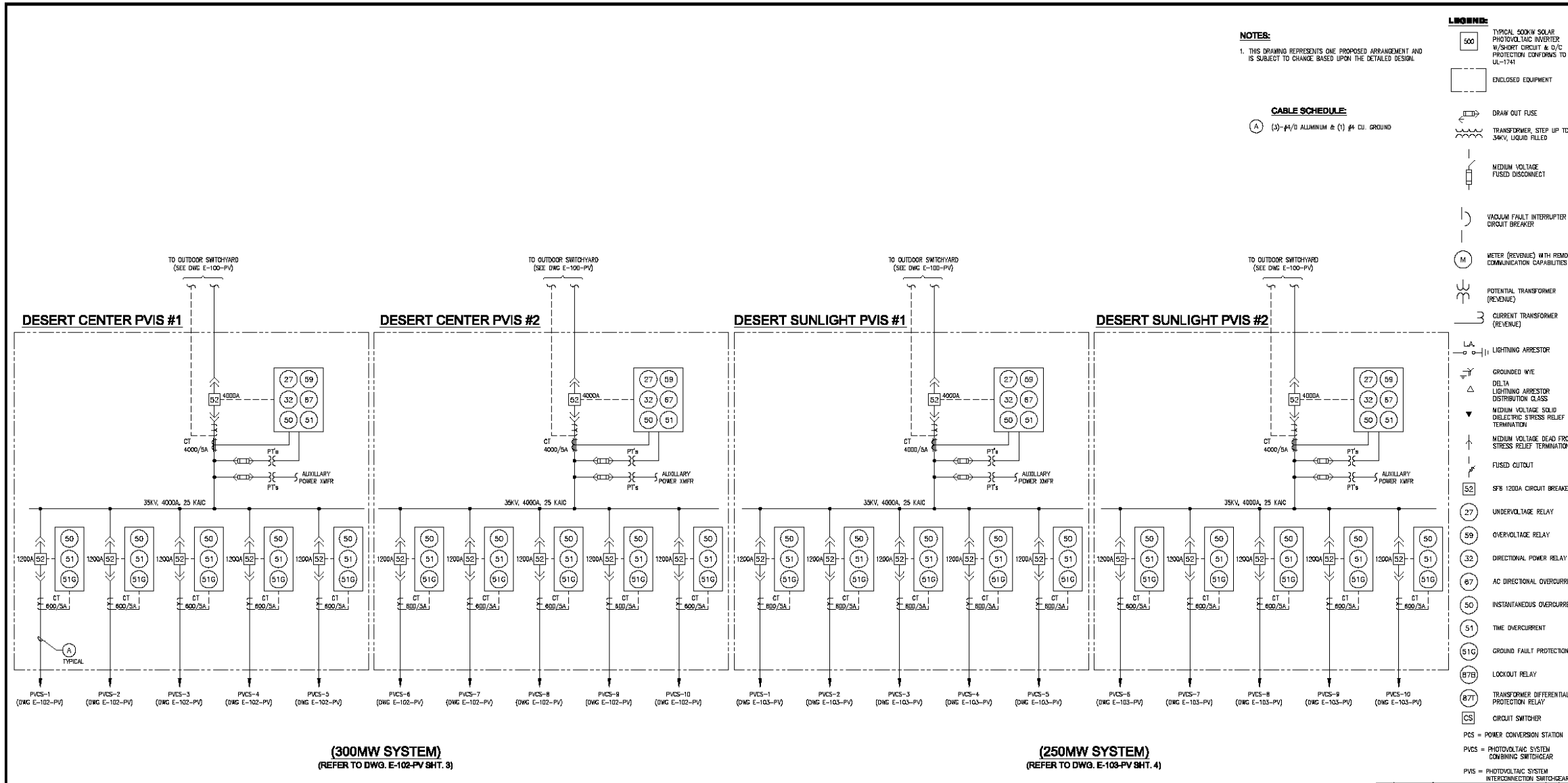
DRAWING: MAIN ONE LINE DIAGRAM
230KV OUTDOOR SWITCHYARD
(SHT 1)

PROJ. NO.	PROJ. ENGR.	DR. BY	CHK. BY	SCALE:
0112-0104-20	X	MJA	EC	AS NOTED

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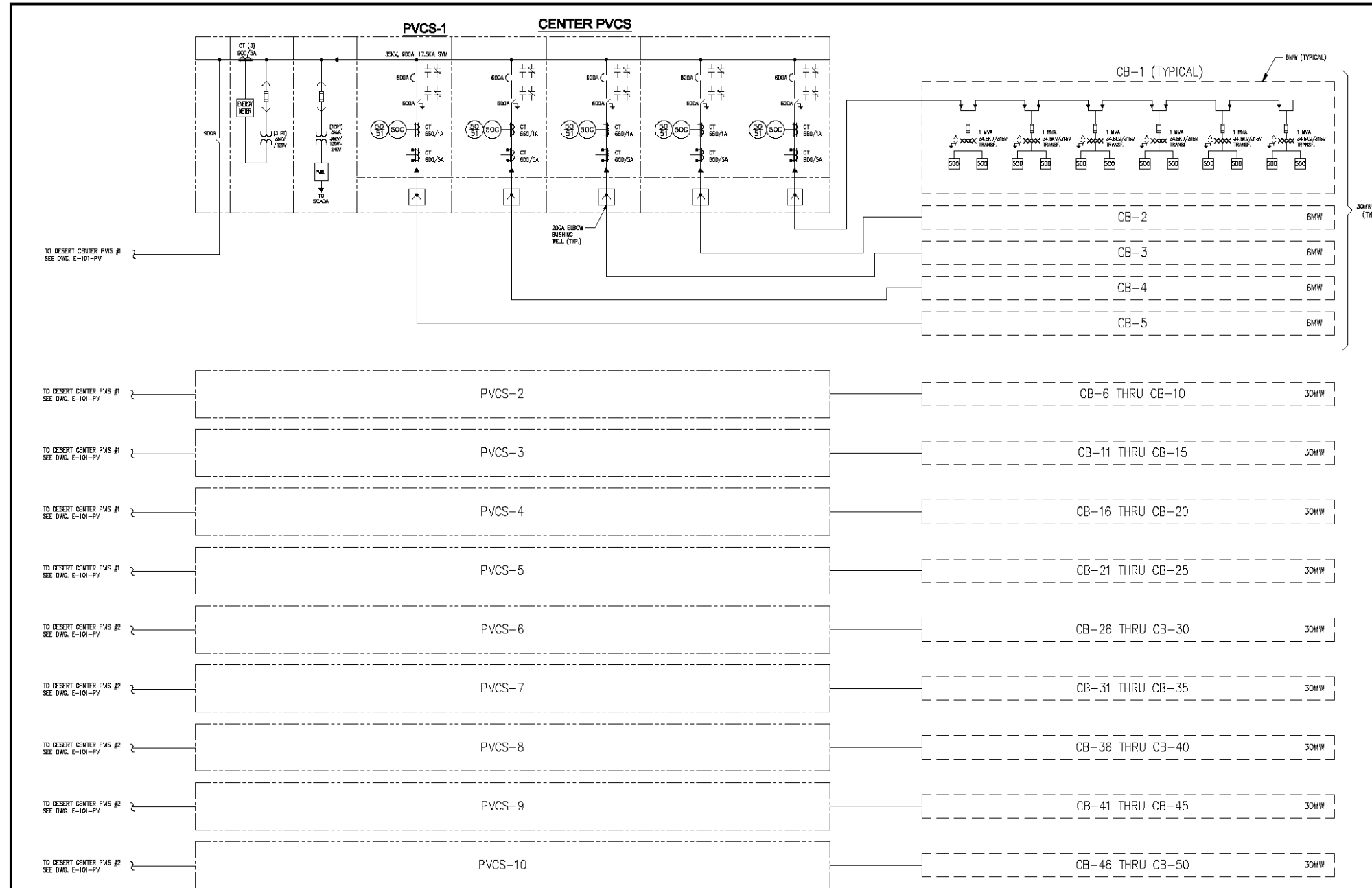


PVIS MAIN ONE LINE DIAGRAM - (SH 2)

SCALE: N.T.S.

REV	DATE	REVISION DESCRIPTION	BY	CHK	APP
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A	05-15-09	FOR INFORMATION ONLY	MAJ	KC	TZ
REV	DATE	REVISION DESCRIPTION	BY	CHK	APP
PROJECT: 300 MW ac SOLAR PHOTOVOLTAIC SYSTEM DRAWING: PVIS MAIN ONE LINE DIAGRAM (SHT 2)					
PROJ. MGR	PROJ. ENGR.	DR. BY (CHK. BY)	SCALE:		
PROJ. DIRECTOR	DRAWING NO.	MAJ	12	L&S NOTED	
0112-0104-20	E-101-PV	B			
THIS PRINT IS NOT TO BE USED FOR CONSTRUCTION UNLESS NOTED AND SIGNED OK FOR CONSTRUCTION ABOVE LAST REVISION					
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REFERENCE DRAWINGS:
1. DWG. E-101-PV
PVS MAIN ONE LINE DIAGRAM

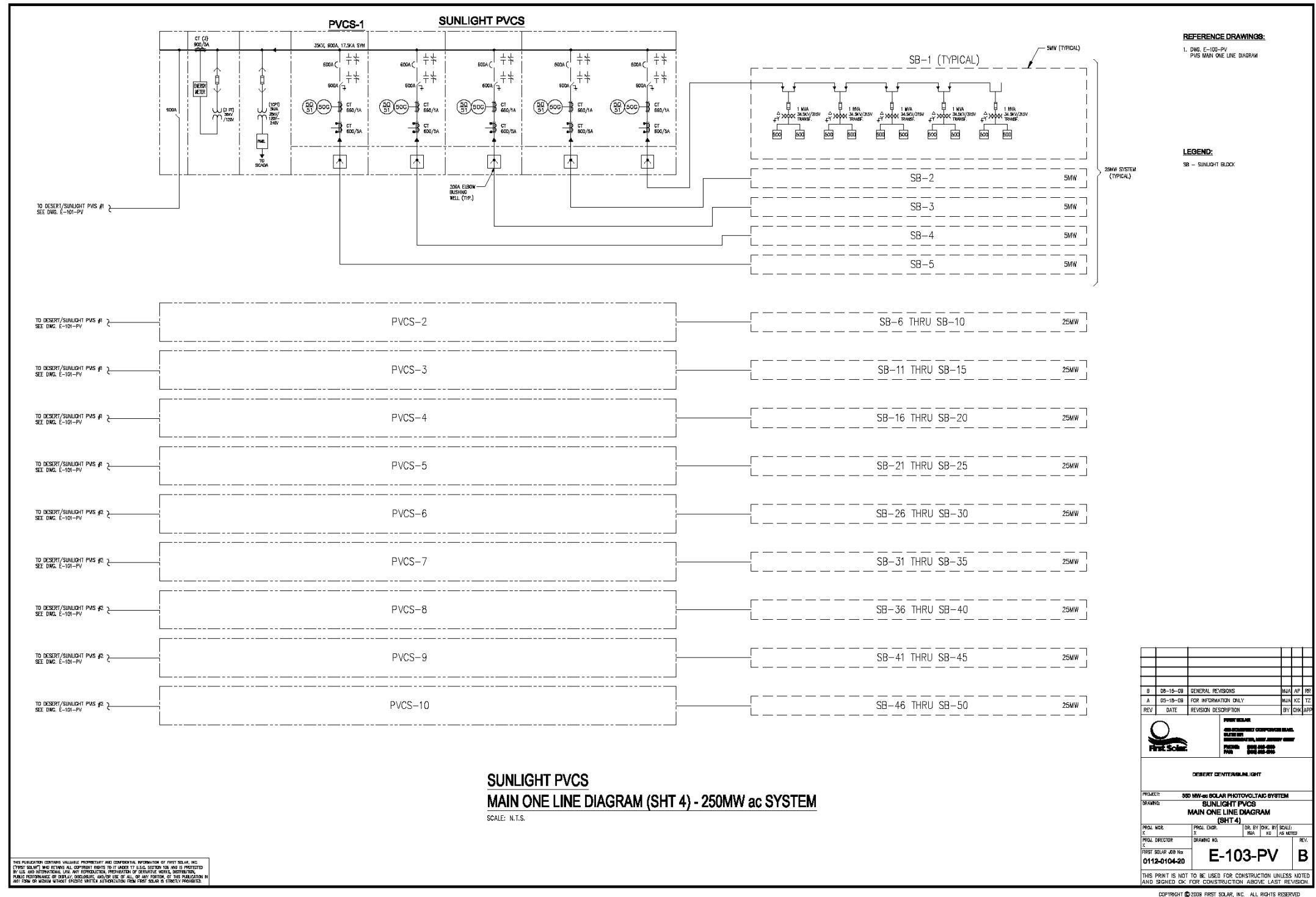
LEGEND:
CB - CENTER BLOCK

**CENTER PVCS
MAIN ONE LINE DIAGRAM (SHT 3) - 300MW ac SYSTEM**
SCALE: N.T.S.

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REV	DATE	REVISION DESCRIPTION	BY	CHK	APP
B	08-15-08	GENERAL REVISIONS	MJA	AP	RS
A	05-15-08	FOR INFORMATION ONLY	MJA	KC	TZ
REV	DATE	REVISION DESCRIPTION	BY	CHK	APP
DESERT CENTERSUNLIGHT PROJECT: 300 MW ac SOLAR PHOTOVOLTAIC SYSTEM DRAWING: CENTER PVCS MAIN ONE LINE DIAGRAM (SHT 3)					
PROJ. MGR.	PROJ. ENGR.	DR. BY (CHK. BY)	SCALE:	REV.	
IE	E	MJA	1/2	IE	1/2
PROJ. DIRECTOR	DRAWING NO.	FIRST SOLAR JOB No. E-102-PV B			
0112-0104-20		THIS PRINT IS NOT TO BE USED FOR CONSTRUCTION UNLESS NOTED AND SIGNED OK FOR CONSTRUCTION ABOVE LAST REVISION			
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*** 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

DESERT SUNLIGHT 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: Vice President, Business Development Street: 350 West Washington St., Ste. 600 City: Tempe, AZ 85281-1244 Phone: (602) 414-9300 Facsimile: (602) 414-9400	Contract Sponsor: Attn: Vice President, Renewable and Alternative Power Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-1212 Facsimile: (626) 302-1103
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: 006908818 Federal Tax ID Number: 95-1240335
Contract Administration: Attn: Vice President, Business Development Phone: (602) 414-9300 Facsimile: (602) 414-9400	Contract Administration: Attn: Pam Snethen Phone: (626) 302-9493 Facsimile: (626) 302-9116
Forecasting: Attn: Lou Trippel Phone: (419) 662-7062 Facsimile: (419) 662-8525	Generation Operations Center: Phone: (626) 307-4453 or Phone: (626) 307-4410

<p>DESERT SUNLIGHT LLC ("Seller")</p>	<p>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</p>
<p>Day-Ahead Forecasting: Phone: (419) 662-7062</p>	<p>Day-Ahead Scheduling: <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302-1323 Facsimile: (626) 302-3409 <u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 302-3409 Email: PreSched@SCE.com</p>
<p>Real-Time Forecasting: Phone: (419) 662-7062</p>	<p>Real-Time Scheduling: <u>Manager.</u> Attn: Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 302-3409 <u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 302-3409 Email: RealTime@SCE.com</p>
<p>Payment Statements: Attn: First Solar Development, Accounts Receivable Phone: (602) 414-9305 Facsimile: (602) 414-9405 Email: cfotheringham@firstsolar.com</p>	<p>Payment Statements: Attn: Power Procurement - Finance Phone: (626) 302-3277 Facsimile: (626) 302-3276 Email: PPFDPowerSettle@SCE.com</p>
<p>CAISO Sanctions: Attn: First Solar Development, Accounts Receivable Phone: (602) 414-9305 Facsimile: (602) 414-9405 Email: cfotheringham@firstsolar.com</p>	<p>CAISO Sanctions and SCE Penalties: Attn: Power Procurement - Finance Phone: (626) 302-3277 Facsimile: (626) 302-3276 Email: PPFDPowerSettle@SCE.com</p>

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

DESERT SUNLIGHT LLC (“Seller”)	SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”)
Payments: Attn: First Solar Development, Accounts Receivable Phone: (602) 414-9305 Facsimile: (602) 414-9405 Email: cfotheringham@firstsolar.com	Payments: Attn: Power Procurement - Finance Phone: (626) 302-3277 Facsimile: (626) 302-3276 Email: PPFDPowerSettle@SCE.com
Wire Transfer: BNK: JP Morgan ABA: ACCT:	Wire Transfer: BNK: JP Morgan Chase Bank ABA: 021000021 ACCT: 323-394434
Credit and Collections: Attn: First Solar Phone: (602) 414-9305 Facsimile: (602) 414-9405 Email: cfotheringham@firstsolar.com	Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302-1129 Facsimile: (626) 302-2517
With additional Notices of an Event of Default or Potential Event of Default to: Attn: General Counsel Phone: (646) 366-5500 Facsimile: (646) 3566-2249 Email: mgustafsson@firstsolar.com	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904
Guarantor: Attn: Phone: Facsimile: Email:	
Lender: Attn: Phone: Facsimile: Email:	

*** 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 changes;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of both SCE and the CAISO, including but not limited to, automated forecast and outage submissions.

2. Seller's Availability Forecasting Requirements.

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

- (a) No later than thirty (30) days prior to the Forecasted Initial Synchronization Date, Seller shall provide SCE with a 30-day, hourly forecast of either (i) the expected available total generation capacity of the Generating Facility, in MW or (ii) the forecast of Seller's expected Metered Amounts, in MWh as required by the CAISO ("Availability Forecast"), for the thirty (30) day period commencing on Initial Synchronization using the Web Client.

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

In the event that the Web Client becomes unavailable, Seller shall provide SCE with the Availability Forecast by emailing SCE's Generation Operations Center, at the email address listed in Exhibit C.

- (b) The Availability Forecast, and any updated Availability Forecasts provided pursuant to this Paragraph 2, shall:
 - (i) Not include any anticipated or expected electric energy losses after the CAISO Approved Meter; and
 - (ii) Limit hour-to-hour forecast changes to no less than two hundred fifty (250) kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour forecast changes when the Web Client is available.
- (c) Commencing on or before 5:00 p.m. PPT of the Wednesday prior to the first week covered by the Availability Forecast provided pursuant to Paragraph 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 Availability Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday Availability 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 Availability Forecast update by telephoning SCE's Generation Operations Center, at the telephone number(s) listed in Exhibit C.
- (d) In the event:
 - (i) Seller does not provide real-time communication of availability as provided in Section 3.06(h);
 - (ii) The telecommunications path to obtain real-time data is inoperable; or
 - (iii) Instrumentation is providing faulty or incorrect data; and

Seller learns of any change in the available capacity of the Generating Facility for a period covered by the most recent Availability Forecast update resulting from any cause, including an unplanned outage prior to the time that the next weekly update of the Availability Forecast is due which Seller is required to report under the provisions of the CAISO Tariff related to PIRP and under other applicable provisions of the CAISO Tariff related to availability and outage reporting, then Seller shall provide an updated Availability Forecast to SCE. This updated Availability Forecast must be submitted to SCE via the Web Client by no later than:

- (iv) 5:00 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time. In the absence of the Web Client, Seller shall email these changes to presched@sce.com and within ten (10) minutes thereafter telephone SCE's Scheduling Desk;

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

- (v) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
- (vi) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, within twenty (20) minutes after Seller becomes aware of the event which caused the availability change. In the absence of the Web Client, Seller shall email changes to presched@sce.com and to realtime@sce.com and within ten (10) minutes thereafter telephone SCE's Scheduling Desk. In the event no one answers the phone at the Scheduling Desk, Seller must call the Operations Desk.

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

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

3. SCE's Scheduling Responsibilities.

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

- (a) Using the Availability Forecast submitted to SCE pursuant to Paragraph 2 above, including updated Availability Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using SCE's forecasting model ("SCE's Projected Energy Forecast") in any given hour.
- (b) Adjusting SCE's Projected Energy Forecast for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller is expected to deliver to the Delivery Point.
- (c) Submitting the adjusted forecasts to the CAISO as SC Schedules.
- (d) Receiving notification of the Final Schedules from the CAISO.

4. Seller's Outage Scheduling Requirements.

Seller shall be responsible for providing SCE with all information required for generation outage scheduling and all expenses and costs associated with all

requirements and timelines for generation outage scheduling contained in the CAISO's Scheduled and Forced Outage Procedure T-113 as posted on the CAISO's website.

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

EXHIBIT E

Intentionally deleted.

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

EXHIBIT F

Energy Replacement Damage Amount

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

EXHIBIT F*Energy Replacement Damage Amount*

In accordance with the provisions of Section 3.05, if at the end of any Term Year, commencing with the end of the second Term Year, Seller fails to meet Seller's Energy Delivery Obligation over the twenty four (24) month period immediately preceding the end of the applicable Term Year, then Seller shall be subject to an Energy Replacement Damage Amount penalty calculated as follows:

ENERGY REPLACEMENT DAMAGE AMOUNT =

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

Where:

- A = Seller's Energy Delivery Obligation in kWh.
- B = Sum of Qualified Amounts over the twenty four (24) month period immediately preceding the end of the applicable Term Year in kWh.
- C = Sum of Lost Output over the twenty four (24) month period immediately preceding the end of the applicable Term Year in kWh.
- D = Simple average of the Market Price for all Settlement Intervals during the twenty four (24) month period immediately preceding the end of the applicable Term Year in \$/kWh.
- E = Energy Price in \$/kWh (i.e., \$/MWh/1000).
- F = Energy Replacement Damage Amount calculated (and paid in full to SCE) at the end of the previous Term Year, if any, in dollars.

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>Date</i>	<i>Milestones</i>
1	11/7/06	Filed ROW application with BLM.
2	11/19/06	Submitted interconnection applications #146 and 147.
3	7/21/08	Received System Impact Study for Desert Sunlight PV 1 #146
4	12/17/08	Received System Impact Study for Desert Sunlight PV 2 #147.
5	7/31/09	Receives Interconnection Facilities Study #146
6	12/31/09	Receives Interconnection Facilities Study #147
7	12/31/09	Files a CEC Certification and Verification application.
8	3/31/10	Executes a Large Generator Interconnection Agreement.
9	7/1/10	Receives FERC acceptance of Large Generator Interconnection Agreement.
10	7/31/10	Receives CEC Certification and Verification.
11	7/1/12	BLM issues ROD granting ROW.
12	7/1/12	Executes an Engineering, Procurement and Construction ("EPC") contract.
13	12/1/12	Completes Financing.
14	12/1/12	Begins construction of the Generating Facility.
15	1/2/13	Begins startup activities.
16	3/31/13	Achieves Initial Synchronization.
17	4/30/15	Achieves Commercial Operation.
18	5/30/15	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 obligation to complete a Milestone Progress Reporting Form for the preceding month and submit such report to SCE shall begin on the first day of the first full calendar month after the Effective Date of this Agreement and shall end immediately after a Milestone Progress Reporting Form is completed and submitted for the month in which the Firm Operation Date occurs.

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.

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

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

Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

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

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

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

The obligations of Guarantor hereunder shall not be subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

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

2. Guaranty Limit.

Subject to Paragraph 13, 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. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

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

- (a) The liability of Guarantor under this Guaranty is a continuing 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) 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
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) 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;

- (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
- (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
- (viii) 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;
- (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (x) 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
- (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the earlier of: (i) the date on which the Obligations have been performed or paid in full; (ii) the date on which Guarantor has paid to Beneficiary the amount set forth in Section 2 of this guaranty, or (iii) with regard to future transactions, the date on which Guarantor provides Beneficiary with written notice of termination, with such termination becoming effective sixty (60) calendar days from the date Beneficiary receives such written notice from Guarantor.

No such notice or termination shall release Guarantor from any liability as to any amount or performance that is owing under the Agreement as of the termination date.

- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, 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.

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

5. Bankruptcy; Post-Petition Interest.

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

The obligations of Guarantor under this Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

- (b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (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.

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

6. Subrogation.

Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones all subrogation rights until all Obligations have been irrevocably paid in full to the Beneficiary.

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

7. Subordination.

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

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

Guarantor shall make no claim for such indebtedness until all Obligations of Principal have been fully discharged.

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

- (b) If Beneficiary so requests:

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

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

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

8. Waivers of Guarantor.

To the fullest extent permitted by applicable law;

- (a) Guarantor waives the benefit of any statute of limitations affecting its liability under this Guaranty or the enforcement of this Guaranty.
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (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 other than full performance or payment;
 - (f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
 - (g) 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;
 - (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;
 - (i) Other than 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, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
 - (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. 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

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

a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. Assignment, Successors and Assigns.

This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors, assigns and creditors.

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

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor.

Guarantor hereby represents and warrants that:

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

12. Financial Statements.

- (a) If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
 - (i) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
 - (ii) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and:
 - (1) Certified in accordance with all applicable laws and regulations, including all applicable Securities and Exchange Commission (“SEC”) rules and regulations, if Guarantor is an SEC reporting company; or
 - (2) Certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.
- (b) For the purposes of the requirement in this Paragraph 12, if Guarantor’s financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

13. 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 13 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.

14. 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.

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.

15. 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 party.

16. 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.

17. Third Party Rights.

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

18. Notices.

Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to

the person and at the address for notices specified below.

Beneficiary:

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: [\[Credit Manager\]](#)
Phone: (626) _____
Facsimile: (626) _____

with a copy to:

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

with an additional copy to:

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 3B
Rosemead, CA 91770
Attn: Manager, Power Procurement Section, Law Dept.
Phone: (626) _____
Facsimile: (626) _____

Guarantor:

[\[Guarantor\]](#)
[\[Street\]](#)
[\[City, State Zip\]](#)
Attn:
Phone:
Facsimile:

Principal:

[\[Principal\]](#)
[\[Street\]](#)
[\[City, State Zip\]](#)
Attn:

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

Phone:

Facsimile:

Such notice shall be effective upon confirmation of the 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.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____ *[legal name]*

By: _____

Name: _____

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.

EXHIBIT J

Non-Disclosure Agreement

Desert Sunlight LLC

May 20, 2009

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770

Attn: Vice-President of Renewable and Alternative Power

Reference is made to that certain Non-Disclosure Agreement between OptiSolar Inc. ("OptiSolar Inc."), a Delaware corporation, and Southern California Edison Company ("SCE"), a California corporation, dated on or about June 27, 2007, and attached hereto (the "NDA").

This letter will confirm that Desert Sunlight LLC, a Delaware limited liability company, has read the attached NDA, and agrees to be bound by it along with and to the same extent as OptiSolar Inc., and agrees to make all of the terms and conditions contained in the NDA enforceable against it.

Sincerely,

Desert Sunlight LLC



Arun Banskota
Vice President, Business Development

Accepted and agreed this 5th day of June 2009

SOUTHERN CALIFORNIA EDISON COMPANY

By: 
Name: Stuart R. Hemphill
Title: Vice President, Renewable and Alternative Power

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

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

OPTISOLAR, INC.

SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”), a California corporation, and OptiSolar Inc. (“OptiSolar Inc.”), a Delaware Corporation, hereby enter into this Non-Disclosure Agreement (“Agreement”).

SCE and OptiSolar 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 Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources (“ERRs”) on March 12, 2007, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. OptiSolar 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 OptiSolar Inc. to SCE as part of OptiSolar Inc. submission of a proposal in response to the RFP (the “Proposal”), or any confidential or proprietary information that may be disclosed by SCE to OptiSolar Inc. as part of discussions or negotiations with OptiSolar Inc. concerning OptiSolar Inc.’s Proposal.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, all oral or written communications exchanged between the Parties on or after the Effective Date, as set forth in Section 10 of this Agreement, as part of the Proposal shall be referred to as "Confidential Information."

Any such communications must comply with the provisions of Section 6 herein to be considered Confidential Information.

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"), (iii) the California Energy Commission ("CEC") and (iv) the California Independent System Operator ("CAISO").

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, CAISO 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.

SCE may also disclose Confidential Information as may be reasonably required to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be

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- sold to SCE under any agreement reached as a result of discussions or negotiations.
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 OptiSolar Inc. can demonstrate in writing was already known to SCE or OptiSolar Inc. prior to the effective date of this Agreement;
 - c. Information which comes to SCE or OptiSolar Inc. from a bona fide third party source not under an obligation of confidentiality;
 - d. Information which is independently developed by SCE or OptiSolar Inc. without use of or reference to Confidential Information or information containing Confidential Information; or
 - e. The fact that OptiSolar Inc. submitted a Proposal in response to the RFP.
 5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.
 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. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as SCE or OptiSolar 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.

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

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.

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, California 91770
 Attention: Director, Renewable and Alternative Power
 Telephone: (626) 302-1212
 Facsimile: (626) 302-1103

If to OptiSolar Inc.:

OptiSolar Inc.
Attention: Executive Vice-President
31302 Huntwood Avenue
Hayward, CA 94544
Telephone: 510 401 5800
Facsimile: 510 401 5859

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.

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

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

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

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

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

14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.

15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.

16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.

[Remainder of page left blank intentionally.]

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

OptiSolar Inc.,

SOUTHERN CALIFORNIA EDISON
COMPANY,

a Delaware corporation

a California corporation.

By:

By:

✓ Philip Rettger
PHILIP RETTGER
EXECUTIVE VICE PRESIDENT

Stuart R. Hemphill
Stuart R. Hemphill
Director
Renewable and Alternative Power

Date: 5/17/07

Date: June 27, 2007

*** End of EXHIBIT J ***

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*

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.	3.13
	Mid-Peak	Fixed Value.	1.35
	Off-Peak	Fixed Value.	0.75
Winter	Mid-Peak	Fixed Value.	1.00
	Off-Peak	Fixed Value.	0.83
	Super-Off-Peak	Fixed Value.	0.61

“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.

All times referenced in this Exhibit K are Pacific Prevailing Time.

*** 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 Full or Partial Development Security Refund.

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

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), 2.04(c), or 5.05(a); or
- (b) Seller has provided SCE with Seller's final Notice of Completed Installation and completed the Final Test of the entire Contract Capacity pursuant to Paragraph 3 below.

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

If 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 Final Demonstrated Contract Capacity.

- (a) Determination of the Final Demonstrated Contract Capacity.
 - (i) Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within thirty (30) days after Seller's final Notice of Completed Installation complete a site visit in order:
 - (1) To verify that the Generating Facility was developed in accordance with the Generating Facility Capacity and Site Description set forth in Exhibit B;
 - (2) To determine the Final Demonstrated Contract Capacity; and
 - (3) To determine the Installed DC Rating.
 - (ii) The "Final Demonstrated Contract Capacity" shall be the lesser of:
 - (1) The Generating Facility Capacity as verified by the site visit; or
 - (2) Contract Capacity.

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

- (iii) Seller shall promptly submit a revised Exhibit B to reflect such verified Generating Facility Capacity.
- (b) SCE Calculation and Return of the Development Security.
 - (i) If the Final Demonstrated Contract Capacity as determined in Paragraph 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.
 - (ii) If the Final Demonstrated Contract Capacity as determined in Paragraph 3(a) above is less than the Contract Capacity, then Seller shall qualify to receive a return of only a portion of the Development Security corresponding to the level of the Final Demonstrated Contract Capacity.
 - (iii) Based upon the information in Paragraph 3(a), SCE shall calculate the amount of Development Security refund due Seller pursuant to Sections 3.04(d) and 3.04(e).
 - (iv) SCE shall provide Notice to Seller of the amount of Development Security being returned pursuant to Paragraph 3(d), the amount of Development Security retained or forfeited, as applicable, and the reason(s) that a retention or forfeiture of all or part of the Development Security is appropriate.
 - (v) SCE shall return any Development Security due Seller if such Development Security was posted in the form of cash.
 - (vi) SCE shall 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.

*** End of EXHIBIT L ***

EXHIBIT M

Seller's Estimate of Lost Output

EXHIBIT M*Seller's Estimate of Lost Output*

Lost Output, as used in Section 3.21, 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 may revise the procedure to use additional factors, such as temperature, in determining the Generating Facility Energy Yield Curve and calculating the Lost Output, if Seller can demonstrate that the additional factors increases the accuracy of the Generating Facility Energy Yield Curve, subject to SCE's acceptance.

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

1. Log of Lost Output Events.

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

- (a) One (1) column for a Lost Output event number;
- (b) One (1) column for the Term Year number;
- (c) One (1) column for the start date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the duration;
- (h) One (1) column for the cause;
- (i) One (1) column for the total of Qualified Amounts during all of the Settlement Intervals of the Lost Output event, recorded in Seller's Settlement Interval Estimate of Lost Output set forth in Item 4(i) in this Exhibit M;
- (j) One (1) column for the total of the Lost Output *preliminary* results during all of the Settlement Intervals of the Lost Output event, calculated in Seller's

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

Settlement Interval Estimate of Lost Output set forth in Item 4(j) in this Exhibit M;

- (k) One (1) column for a percentage calculated by dividing the preliminary results set forth in Item 1(j) of this Exhibit M by the Qualified Amounts set forth in Item 1(i) of this Exhibit M;
- (l) One (1) column for the total of the Lost Output final results during all of the Settlement Intervals of the Lost Output event, calculated in Settlement Interval Estimate of Lost Output set forth in Item 4(k) in this Exhibit M; and
- (m) One (1) column for a percentage calculated by dividing the final results set forth in Item 1(l) of this Exhibit M by the Qualified Amounts set forth in Item 1(i) of this Exhibit M.

2. Generating Facility Energy Yield Curves.

- (a) Seller shall determine a Generating Facility Energy Yield Curve for the expected facility performance on a single dedicated worksheet as follows:
 - (i) One (1) column to identify each hour of the year;
 - (ii) One (1) column for the plane-of-array solar insolation;
 - (iii) One (1) column for the temperature;
 - (iv) One (1) column for the manufacturer's estimate of the electric energy that can be produced by the Generating Facility during each hour;
 - (v) One (1) column for the temperature corrected estimated energy: Correct each energy measurement to 25 degrees Celsius (STC temperature) using the module's temperature coefficient;
 - (vi) One (1) row for each hour of the year;
 - (vii) One graph for the relationship between irradiance and production: Plot temperature-corrected energy measurement as a scatter plot (y axis = energy; x axis = plane of array irradiance)
 - (viii) Generate linear regression curve fit: Using computational software, generate a single-variable linear regression of the data to obtain the regression's two coefficients.
- (b) Seller shall determine a Generating Facility Energy Yield Curve for the actual demonstrated facility performance on a single dedicated worksheet as follows:

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

- (i) One (1) column to identify each Settlement Interval;
 - (ii) One (1) column for the date;
 - (iii) One (1) column for the start time of the time period;
 - (iv) One (1) column for the plane-of-array solar insolation;
 - (v) One (1) column for the temperature;
 - (vi) One (1) column for the metered electric energy produced during the Settlement Interval;
 - (vii) One (1) column for the temperature corrected estimated energy: Correct each energy measurement to 25 degrees Celsius (STC temperature) using the module's temperature coefficient;
 - (viii) One (1) row for each Settlement Interval in the year, that is not part of a Lost Output event;
 - (ix) Plot data set: Plot temperature-corrected energy measurement as a scatterplot (y axis = energy; x axis = plane of array irradiance)
 - (x) Generate a linear regression curve fit: Using computational software, generate a single-variable linear regression of the data to obtain the regression's two coefficients.
- (c) Seller shall also create a single chart which plots the yield curves set forth in Item 2(a)(viii) and Item 2(b)(x) of this Exhibit M on a summary Generating Facility Energy Yield curve worksheet.

3. Solar Insolation Data Collection.

Seller shall record average Settlement Interval solar insolation, in watt-hours per square meter, and Settlement Interval Qualified Amounts in the Lost Output Workbook on individual Term Year worksheets.

Each Term Year worksheet shall be arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the date;
- (c) One (1) column for the beginning time;
- (d) One (1) column for the weekday;

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

- (e) One (1) column for each recorded solar insolation measurement;
 - (f) One (1) column for each recorded temperature measurement;
 - (g) One (1) column for each Qualified Amounts quantity;
 - (h) One (1) column for an initial forecast of Qualified Amounts determined by:
 - (i) Applying the recorded solar insolation measurement set forth in Item 3(e) of this Exhibit M to the Energy Yield Curve determined in Item 2(a) of this Exhibit M; and
 - (ii) Correcting this result for the measured temperature set forth in Item 3(f) of this Exhibit M, using the module's temperature coefficient.
 - (i) One (1) column for a final forecast of Qualified Amounts determined by:
 - (i) Applying the recorded solar insolation measurement set forth in Item 3(e) of this Exhibit M to the Energy Yield Curve determined in Item 2(b) of this Exhibit M; and;
 - (ii) Correcting this result for the measured temperature set forth in Item 3(f) of this Exhibit M, using the module's temperature coefficient
 - (j) One (1) row for each Settlement Interval period.
4. Detailed Estimate of Lost Output.

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

- (a) One column for an item number;
- (b) One (1) column for the Lost Output event number;
- (c) One (1) column for the start date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the weekday;

- (h) One (1) column for the solar insolation;
- (i) One (1) column for Qualified Amounts;
- (j) One (1) column for a preliminary estimate of the Qualified Amounts that would have been produced by the Generating Facility, but for the Lost Output event:
 - (i) Multiplying the solar insolation:
 - (ii) Times the appropriate initial energy yield set forth in Item 3(h) of this Exhibit M, as follows:
 1. For the first eleven (11) months of the first Term Year, the appropriate initial energy yield curve shall be the energy yield curve set forth in Item 2(a) of this Exhibit M;
 2. For the first eleven (11) months of any Term Year, other than the first Term Year, the appropriate initial energy yield curve shall be the energy yield curve set forth in Item 2(b) of this Exhibit M for the previous Term Year;
- (k) One (1) column for a final estimate of the Qualified Amounts that would have been produced by the Generating facility, but for the Lost Output event calculated by:
 - (i) Multiplying the solar insolation;
 - (ii) Times the final energy yield curve from Item 2(b) of this Exhibit M for the Term Year being calculated;
- (l) One (1) column for the preliminary estimate of Lost Output calculated by:
 - (i) Subtracting the actual Qualified Amount quantities set forth in Item 4(i) of this Exhibit M;
 - (ii) From the preliminary estimate of the Qualified Amounts that would have been produced by the Generating Facility, but for the Lost Output event, calculated in Item 4(j); and
- (m) One (1) column for the final estimate of Lost Output calculated by
 - (i) Subtracting the actual Qualified Amount quantities set forth in Item 4(i) of this Exhibit M;

- (ii) From the estimate of Qualified Amounts that would have been produced by the Generating Facility, but for the Lost Output event, calculated in Item 4(k) of this Exhibit M; and
- (n) One (1) row for each Settlement Interval.

5. Generating Facility Performance Indicator Calculation.

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

- (a) The first table shall contain the monthly Qualified Amount totals and shall consist of:
 - (i) One (1) column for the month number;
 - (ii) One (1) column for the month name;
 - (iii) One (1) column for the year number;
 - (iv) One (1) column for the monthly Qualified Amount totals for each Term Year from the Solar Insolation Data Collection worksheet column set forth in Item 3(g) of this Exhibit M; and
 - (v) One (1) row for each month;
- (b) The second table shall contain the monthly totals of forecasted Qualified Amount and shall consist of:
 - (i) One (1) column for the month number;
 - (ii) One (1) column for the month name;
 - (iii) One (1) column for the year number;
 - (iv) One (1) column for the monthly totals of forecasted Qualified Amount for each Term Year from the Solar Insolation Data Collection worksheet column set forth in Item 3(i) of this Exhibit M; and
 - (v) One (1) row for each month; and
- (c) The third table shall contain monthly Performance Indicator totals and shall consist of:
 - (i) One (1) column for the month number;

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

- (ii) One (1) column for the month name;
 - (iii) One (1) column for the year number;
 - (iv) One (1) column for a monthly Generating Facility Performance Indicator result and a Term Year Generating Facility Performance Indicator results calculated by:
 - 1. Dividing the appropriate value in the first table;
 - 2. By the appropriate value in the second table;
 - (v) One (1) row for each month; and
 - (vi) One (1) row for the Term Year Generating Facility Performance Indicator results.
6. Assignment of Lost Output Estimate to an Independent Consultant.

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

*** 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 1D

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").

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

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

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

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

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

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

The facsimile transmittal shall be deemed delivered when received. 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 twenty (20) Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has

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

not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

- []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
- []E. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.

Sections F and G (below) will not apply for a Letter of Credit that is provided solely for Performance Assurance.

- []F. The Beneficiary is entitled to retain the entire Development Security:
 - (i) as a result of Applicant's failure to achieve Commercial Operation by the Startup Deadline or any extended Startup Deadline as provided in the Agreement;
 - (ii) because SCE has given Seller Notice that SCE has reasonably determined that a prudent developer would not be able to achieve Initial Synchronization at all, and Seller did not send Notice to SCE that Seller disputes this determination in good faith within thirty (30) days of Seller's receipt of the Notice from SCE;
 - (iii) because an arbitrator or mediator has determined that SCE has reasonably determined that a prudent developer would not be able to achieve Commercial Operation by the Startup Deadline; or
 - (iv) because the Agreement has terminated due to an Event of Default by Applicant prior to the Startup Deadline.
- []G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of twenty dollars (\$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.

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

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

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

*** End of EXHIBIT N ***

EXHIBIT O

Information for Quarterly Facility Status Report

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

EXHIBIT O

Information for Quarterly Facility Status Report

1. Following the Firm Operation Date, Seller shall within thirty (30) days following the end of each calendar quarter provide to SCE a report (the “Quarterly Facility Status Report” or “QFSR”). Seller will be required to report all:
 - a. PV module derations;
 - b. Changes in PV module certification;
 - c. Amount of decommissioned equipment at the Generating Facility, including:
 - i. PV modules (in MW, D/C);
 - ii. Inverters (in MW, A/C); and
 - d. Amount of new equipment at the Generating Facility, including:
 - i. PV modules (in MW, D/C); and
 - ii. Inverters (in MW, A/C).
2. The QFSR shall:
 - a. Sum the effect of the above-listed changes from the last update; and
 - b. State the total MW installed, including:
 - i. PV modules (in MW, D/C); and
 - ii. Inverters (in MW, A/C).
3. Seller will provide revised maps to Exhibit B, when applicable.
4. SCE and Seller shall mutually agree to revise the required reporting items to suit the reasonable administrative needs of this Agreement as they may change from time to time.

*** End of EXHIBIT O***

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

EXHIBIT P

Energy Price and Performance Assurance Amount

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

EXHIBIT P

Energy Price and Performance Assurance Amount

1. Following Initial Synchronization, Seller shall receive payments based on one of the tables contained within this Exhibit P.
2. The determination of which table to use for purposes of payment and Performance Assurance Amount will be based on when the Generating Facility achieves Initial Synchronization.
3. During the Startup Period, Seller shall be paid based on the Cumulative Percentage of Installed Capacity at the end of the preceding month, but not less than fifty percent (50%) or greater than ninety-five percent (95%) until Commercial Operation.

Table P-1(a)

If (i) Initial Synchronization occurs on or before March 31, 2012 and (ii) Seller's share of the Total Project Network Upgrades Costs are greater than Eleven Million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$106.90
1	106.90
2	107.97
3	109.05
4	110.14
5	111.24
6	112.35
7	113.48
8	114.61
9	115.76
10	116.91
11	118.08
12	119.26
13	120.46
14	121.66
15	122.88
16	124.11
17	125.35
18	126.60
19	127.87
20	129.15

- The Performance Assurance Amount will be Three Hundred Eighteen Thousand Six Hundred Thirty-Five dollars (**\$318,635**) per MW of Contract Capacity.

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

Table P-1(b)

If (i) Initial Synchronization occurs on or before March 31, 2012 and (ii) Seller's share of the Total Projects Network Upgrades Costs do not exceed Eleven million dollars (\$11,000,000):

1. The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$106.50
1	106.50
2	107.57
3	108.64
4	109.73
5	110.82
6	111.93
7	113.05
8	114.18
9	115.32
10	116.48
11	117.64
12	118.82
13	120.01
14	121.21
15	122.42
16	123.64
17	124.88
18	126.13
19	127.39
20	128.66

2. The Performance Assurance Amount will be Three Hundred Seventeen Thousand Four Hundred Forty-Two dollars (**\$317,442**) per MW of Contract Capacity.

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

Table P-2(a)

If (i) Initial Synchronization occurs between April 1, 2012 and March 31, 2013 and (ii) Seller's share of the Total Project Network Upgrades Costs are greater than Eleven Million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$110.00
1	110.00
2	111.10
3	112.21
4	113.33
5	114.47
6	115.61
7	116.77
8	117.93
9	119.11
10	120.31
11	121.51
12	122.72
13	123.95
14	125.19
15	126.44
16	127.71
17	128.98
18	130.27
19	131.58
20	132.89

- The Performance Assurance Amount will be Three Hundred Twenty Seven Thousand Eight Hundred Fifty-Six dollars (**\$327,856**) per MW of Contract Capacity.

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

Table P-2(b)

If (i) Initial Synchronization occurs between April 1, 2012 and March 31, 2013 and (ii) Seller's share of the Total Projects Network Upgrades Costs do not exceed Eleven million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$109.60
1	109.60
2	110.70
3	111.80
4	112.92
5	114.05
6	115.19
7	116.34
8	117.51
9	118.68
10	119.87
11	121.07
12	122.28
13	123.50
14	124.74
15	125.98
16	127.24
17	128.51
18	129.80
19	131.10
20	132.41

- The Performance Assurance Amount will be Three Hundred Twenty Six Thousand Six Hundred Sixty-Four dollars (**\$326,664**) per MW of Contract Capacity.

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

Table P-3(a)

If (i) Initial Synchronization occurs between April 1, 2013 and March 31, 2014 and (ii) Seller's share of the Total Project Network Upgrades Costs are greater than Eleven Million dollars (\$11,000,000):

1. The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$113.20
1	113.20
2	114.33
3	115.48
4	116.63
5	117.80
6	118.97
7	120.16
8	121.37
9	122.58
10	123.81
11	125.04
12	126.29
13	127.56
14	128.83
15	130.12
16	131.42
17	132.74
18	134.06
19	135.40
20	136.76

2. The Performance Assurance Amount will be Three Hundred Thirty-Seven Thousand Two Hundred Forty-Eight dollars (**\$337,248**) per MW of Contract Capacity.

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

Table P-3(b)

If (i) Initial Synchronization occurs between April 1, 2013 and March 31, 2014 and (ii) Seller's share of the Total Projects Network Upgrades Costs do not exceed Eleven million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$112.80
1	112.80
2	113.93
3	115.07
4	116.22
5	117.38
6	118.55
7	119.74
8	120.94
9	122.15
10	123.37
11	124.60
12	125.85
13	127.11
14	128.38
15	129.66
16	130.96
17	132.27
18	133.59
19	134.93
20	136.27

- The Performance Assurance Amount will be Three Hundred Thirty Six Thousand Fifty-Seven dollars (**\$336,057**) per MW of Contract Capacity.

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

Table P-4(a)

If (i) Initial Synchronization occurs between April 1, 2014 and March 31, 2015 and (ii) Seller's share of the Total Project Network Upgrades Costs are greater than Eleven Million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$116.40
1	116.40
2	117.56
3	118.74
4	119.93
5	121.13
6	122.34
7	123.56
8	124.80
9	126.04
10	127.30
11	128.58
12	129.86
13	131.16
14	132.47
15	133.80
16	135.14
17	136.49
18	137.85
19	139.23
20	140.62

- The Performance Assurance Amount will be Three Hundred Forty Six Thousand Six Hundred Eighty-Three dollars (**\$346,683**) per MW of Contract Capacity.

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

Table P-4(b)

If (i) Initial Synchronization occurs between April 1, 2014 and March 31, 2015 and (ii) Seller's share of the Total Projects Network Upgrades Costs do not exceed Eleven million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$116.00
1	116.00
2	117.16
3	118.33
4	119.51
5	120.71
6	121.92
7	123.14
8	124.37
9	125.61
10	126.87
11	128.14
12	129.42
13	130.71
14	132.02
15	133.34
16	134.67
17	136.02
18	137.38
19	138.75
20	140.14

- The Performance Assurance Amount will be Three Hundred Forty Five Thousand Four Hundred Ninety-Two dollars (**\$345,492**) per MW of Contract Capacity.

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

Table P-5(a)

If (i) (ii) Initial Synchronization occurs after March 31, 2015 and (ii) Seller's share of the Total Project Network Upgrades Costs are greater than Eleven Million dollars (\$11,000,000):

1. The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$119.50
1	119.50
2	120.70
3	121.90
4	123.12
5	124.35
6	125.60
7	126.85
8	128.12
9	129.40
10	130.70
11	132.00
12	133.32
13	134.66
14	136.00
15	137.36
16	138.74
17	140.12
18	141.52
19	142.94
20	144.37

2. The Performance Assurance Amount will be Three Hundred Fifty Six Thousand Fifty-Four dollars (**\$356,054**) per MW of Contract Capacity.

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

Table P-10

If (i) Initial Synchronization occurs after March 31, 2015 and (ii) Seller's share of the Total Projects Network Upgrades Costs do not exceed Eleven million dollars (\$11,000,000):

- The Energy Price will be as follows:

<u>Term Year</u>	<u>Price, in \$/MWh</u>
From Initial Synchronization of the Generating Facility to beginning of Term Year 1	\$119.10
1	119.10
2	120.29
3	121.49
4	122.71
5	123.94
6	125.18
7	126.43
8	127.69
9	128.97
10	130.26
11	131.56
12	132.88
13	134.20
14	135.55
15	136.90
16	138.27
17	139.65
18	141.05
19	142.46
20	143.89

- The Performance Assurance Amount will be Three Hundred Fifty Four Thousand Eight Hundred Sixty-Two dollars (**\$354,862**) per MW of Contract Capacity.

*** End of EXHIBIT P***

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

EXHIBIT Q

SCE Penalties and CAISO Sanctions

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

EXHIBIT Q*SCE Penalties and CAISO Sanctions*

Seller is liable for SCE Penalties and CAISO Sanctions under the circumstances described in this Exhibit Q.

1. Seller's Liability for SCE Penalties.

If in any hour of any month between Commercial Operation Date and the last day of the Term, Seller fails to comply with its availability forecasting requirements under Appendix D of this Agreement, and the sum of Energy Deviations for each of the six Settlement Intervals in that hour exceed the Performance Tolerance Band described in Paragraph 2 of this Exhibit, then, subject to 1.(a) and 1.(b) below, Seller is liable for an SCE Penalty equal to one hundred fifty percent (150%) of the Energy Price in Section 1.07 for each MW of availability deviation, or any portion thereof, in that hour.

- (a) The SCE Penalty will be waived the first hour of the first calendar day (and any subsequent hours of such day) in each month in which Seller fails to comply with its availability forecasting requirements under Exhibit D.
- (b) The SCE Penalty will be assessed during any hour of any calendar day thereafter in that month in which Seller fails to meet these availability forecasting requirements.

2. Performance Tolerance Band.

The Performance Tolerance Band, in kWh, shall be equal to:

- (a) Three percent (3%) times
- (b) Contract Capacity times
- (c) One (1) hour, i.e., the interval of time for monitoring availability forecasting requirements.

3. Seller's Liability for CAISO Sanctions.

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

- (a) The CAISO Sanctions will be available for billing approximately one hundred twenty (120) days following the last day of a calendar month or thirty (30)

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

days after the CAISO final settlement data is available to SCE, whichever is sooner.

- (b) SCE shall provide to Seller the applicable back-up data used for validating CAISO Sanctions.

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

EXHIBIT R

Demonstration of Incremental Installation

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

Exhibit R

EXHIBIT R*Demonstration of Incremental Installation*1. Seller's Request for Incremental Test.

Pursuant to Section 3.13, Seller shall provide Notices of Completed Installation specifying the amount of Claimed Capacity.

2. Demonstration Periods.

- (a) The Cumulative Percentage of Installed Capacity will be calculated based upon monthly demonstrations (each, a "Monthly Demonstration").
- (b) Each Monthly Demonstration will run for seven (7) consecutive calendar days and will begin on the first day of the calendar month for each month in which Seller delivers a Notice of Completed Installation in which the Claimed Capacity exceeds fifty percent (50%) of the Contract Capacity and continue throughout the following six (6) calendar days. The period of time between 11:00 a.m. (PPT) and 2:00 p.m. (PPT) during each of those seven (7) days during such Monthly Demonstration is herein referred to as the "Demonstration Period".

3. Methodology to Convert kWh to kW and Determine Metered Capacity.

- (a) The kWh output as recorded by the CAISO Approved Meter will be determined for each Settlement Interval during the Demonstration Period. The kWh output for the Settlement Interval that has the highest output of any of such Settlement Intervals during the Demonstration Period shall be determined, and such maximum kWh output shall be converted to kW by multiplying such maximum kWh output by six (6) and changing the units thereof from kWh to kW, with the resulting number expressed in kW being herein referred to as the "Metered Capacity".
- (b) The "Demonstrated Capacity" for the applicable month shall be calculated by:
 - (i) Multiplying the Metered Capacity for such month; by
 - (ii) The applicable Conversion Factor in the following table.

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

Month	Conversion Factor
January	1.10
February	1.05
March	0.95
April	0.95
May	0.95
June	0.95
July	1.00
August	1.00
September	1.00
October	1.00
November	1.05
December	1.10

4. Determining Cumulative Percentage of Installed Capacity.
- (a) If the Demonstrated Capacity as determined in Paragraph 3(b) is greater than or equal to the Claimed Capacity specified in the Notice of Completed Installation, *then* the Cumulative Percentage of Installed Capacity shall be equal to:
 - (i) Claimed Capacity; divided by
 - (ii) Contract Capacity.
 - (b) If the Demonstrated Capacity as determined in Paragraph 3(b) is less than the Claimed Capacity, *then* the Cumulative Percentage of Installed Capacity shall be equal to:

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

- (i) Demonstrated Capacity; divided by
- (ii) Contract Capacity;

provided that the Cumulative Percentage of Installed Capacity shall never be less than the amount thereof determined for the prior month.

- (c) Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within twenty-one (21) days after receipt of Seller's Notice of Completed Installation provide Notice of the most recent Cumulative Percentage of Installed Capacity.
5. At any time during the Startup Period, SCE may 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 verify the Demonstrated Capacity.

*** End of EXHIBIT R***

EXHIBIT S

Actual Availability Report

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

EXHIBIT S

Actual Availability Report

Pursuant to Section 3.23, Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Exhibit S.

1. Availability Workbook.

Seller shall (1) collect the measurement data, listed in Item 2 below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by SCE and (2) electronically send the Availability Workbook to an address provided by SCE.

The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all Inverter Block Units and associated Current Inverters as measured by Seller’s SCADA equipment.

2. Log of Availability.

The Availability Workbook shall be created on a single, dedicated worksheet and shall be in the form of Attachment 1 to this Exhibit S.

The data presented in the Availability Workbook shall not reflect any electric energy losses between the CAISO Approved Meter and the Delivery Point.

ATTACHMENT 1

Actual Availability Report

(Form of Microsoft Excel File Attachment to Email Notice)

[Seller's] Availability Report																									
QFID --- [Seller]																									
All amounts are in MWs																									
Settlement Interval No.	Date	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								
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	8/2/06 14:36	Date/Time of Submit	[Date and time will recalculate when saving file]																						

*** End of EXHIBIT S ***

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

EXHIBIT T

Meteorological Station Specifications

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

EXHIBIT T*Meteorological Station Specifications*

Pursuant to Section 3.06(g), Seller shall install and maintain a minimum of one (1) stand-alone meteorological equipment station for each one (1) square mile, or portion thereof, of the Site. Before Initial Synchronization, only one (1) station shall be required to provide meteorological data relative to Section 3.25(a). Each station shall be equipped with instruments and equipment that meet or exceed those specifications set forth in the CAISO's PIRP Solar Telemetry Requirements and are compatible with the requirements of SCE. SCE and Seller acknowledge that SCE and Seller may update this Exhibit T from time to time in order to accommodate industry standards, the CAISO's PIRP Solar Telemetry Requirements and the mutual needs of SCE and Seller for administration of this Agreement. Updates shall require mutual agreement which shall not be unreasonably withheld by either Party.

Seller shall be required to maintain the meteorological station in accordance with Prudent Electrical Practices. In addition, the solar irradiance sensors must be cleaned after storm events and as required to obtain quality data but no less than weekly. Seller shall log cleaning times and flag data during periods of instrument calibration, cleaning and at replacement.

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

1. Equipment Stations.

- (a) The equipment stations shall be comprised of the following:
 - (i) One (1) heated wind sensor;
 - (ii) One (1) air temperature sensor;
 - (iii) One (1) relative humidity sensor;
 - (iv) One (1) barometric pressure sensor (with DCP sensor);
 - (v) One (1) total global irradiation sensor for each collector plane orientation in the Site. The sensor(s) are oriented at the same inclination and aspect as the collector plane(s);
 - (vi) One (1) total global radiation sensor oriented horizontal to the ground plane (only 1 such sensor shall be required under this Agreement); and
 - (vii) One (1) diffuse radiation sensor (only 1 such sensor shall be required under this Agreement).

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

- (b) In addition, Seller shall report:
 - (i) Solar altitude angle;
 - (ii) Solar azimuth angle;
 - (iii) Precipitation;
 - (iv) Cleaning dates and times for each instrument; and
 - (v) Dates and times when any instrument is out of service or its measurements are suspected or confirmed to be faulty.
- (c) All sensors shall be mounted at the approximate height of the Photovoltaic Module.

2. Attributes of Equipment Station Locations.

The equipment station location(s) should be unencumbered by any shadow or equipment. The equipment station tower is to be placed in front of the solar collectors on the southern side of the Site. In addition, the station's satellite communication transmitter requires an unencumbered south-by-south west view of the sky for antenna placement.

3. Communication.

Seller shall communicate meteorological data to SCE via a system and communication protocol consistent with SCE's employed methods at the time of installation. Current data uplink method is via satellite using a very small aperture terminal (VSAT). SCE shall provide Notice to Seller of changes to the employed method at least two hundred forty (240) days before the Forecasted Initial Synchronization Date. The equipment installed will need to be approved by SCE.

4. Minimum Equipment Requirements.

SCE currently requires equipment with quality levels, compatibility and functional specifications that meet or exceed those of the example meteorological station set forth below in Item 5. Component meteorological sensors meeting or exceeding the sensor specification are also listed in Table T-1. Any equipment different from that listed below must have the approval of SCE prior to installation at the Site, which shall not be unreasonably withheld.

Table T-1: Required Meteorological Sensor Accuracy

Paragraph	Instrument	Range	Minimum Sensor Accuracy	Acceptable Sensors
5.(b)(i) 5.(b)(ii)	Air temperature sensor	-40 to +60°C	±0.9°C	<ul style="list-style-type: none"> • Campbell CS107, CS215 • Vaisala QMT103, QMT110 • Global Water WE700
5.(b)(iii)	Barometric pressure sensor	600 to 1100 hPa	±1.5 hPa	<ul style="list-style-type: none"> • Campbell CS106 • Vaisala PMT16A
5.(b)(iv)	Wind speed sensor	0.5 to 50 m/s	±0.5 m/s	<ul style="list-style-type: none"> • Vaisala WS425 • Gill Instruments Windsonic4 • Novalynx 200-7000 series
5.(b)(iv)	Wind direction sensor	0 to 360°	±5°	<ul style="list-style-type: none"> • Viasala WS425 • Gill Instruments Windsonic4 • Novalynx 200-7000 series
5.(b)(v)	Relative humidity sensor	0 to 100% RH	±4.0%	<ul style="list-style-type: none"> • Campbell CS215 • Vaisala HMT100 • Global Water WE600
5.(b)(vi)	Rotating Shadowband Radiometer	400 to 1100 nm	DNI ±5% GH±2% DIF±3%	<ul style="list-style-type: none"> • Irradiance Inc Model RSR-2
5.(b)(vii)	Plane of array irradiation sensor	310 to 2800 nm	±2%	<ul style="list-style-type: none"> • Kipp and Zonen CMP-11 or CMP-22 • Eppley Lab Model PSP

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

5. Example Meteorological Station.

(a) MAWS301 AWS System

(i) MAWS301 Basic Assembly for MAWS301 Automatic Weather Station, including following modules and functions:

- QML201 AWS Logger with 1.7 MB Flash memory for data logging
- QBR101B Battery regulator
- ENC542PLM Equipment enclosure with backup battery mounting accessories and internal wiring
- Bottom plate with signal connectors for sensors and peripheral equipment
- MAWS LIZARD Set-up software
- MAWS Terminal software

(ii) ENC542SHIELD Radiation Shield for MAWS301 enclosure

(iii) QMZ101 Terminal/maintenance cable for MAWS

(iv) QMBATT12 Back-up battery - 12 Ah/12V, installed in MAWS enclosure, includes wiring

(b) Sensors

(i) QMT110 Air temperature sensor with 10 m cable and connector

- DTR502P22 Radiation shield for QMT110 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)

(ii) QMT103 Air temperature sensor with 5-m cable and connector

- 212417 Extension cables, 25m, shielded, 5-pin F-M connector for QMT103 sensor
- DTR502P22 Radiation shield for QMT103 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)

- (iii) PMT16A Barometric pressure sensor installed within the MAWS301 enclosure
 - (iv) M301-WS425STDH Heated Ultrasonic Wind Sensor with RS485 & power output cable, sensor mounting on 60 mm diameter pole/mast and 36 VDC power supply
 - (v) HMT 100 humidity and temperature sensor
 - (vi) Model RSR-2, Rotating Shadowband Radiometer System from Irradiance Inc. for site global horizontal and diffuse irradiance
 - (vii) Kipp and Zonen Model CMP-11, thermopile pyranometer mounted in the plane of the solar array for each solar array orientation
- (c) Powering.
- MCP150-M3-115 Mains (AC) power supply, installed in enclosure (ENC542PLM), including wiring and surge arrestors for 115 VAC
- (d) Communication.
- (i) DSI485ASET48-M3 Isolated RS-485 module - 2 wire connection, including extra surge arrestors for both lines, installed in MAWS enclosure communications from logger to WS425 sensors
 - (ii) DME421-M3 Ethernet interface serial port to VSAT transmitter. Module mounted within MAWS enclosure
 - (iii) VSAT Hardware, VSAT transmitter, cables with connectors, testing of each site, antenna positioners, mounting hardware. Installation at each site should include program fee for VSAT module.
- (e) Install Accessories.
- (i) APPK-60SET Mast mounting for MAWS enclosure on a 50-60 mm diameter pole/mast/tower
 - (ii) QSA124PT Surge Arrestor for QMT103/110 Temp sensor lines (4-wire)
 - (iii) #010411 Shielded RS485 cabling from MAWS301 to WS425STDH - 10m cables
 - (iv) QSA224DC Surge Arrestor for RS485 lines, wind sensors at 10m

6. Additional.

- (a) The connections and data transfer referenced in Section 3.06(f) must be fully functional before Initial Synchronization, except for such exceptions to such functionality as may be approved by SCE (such approval not to be unreasonably withheld).
- (b) The station(s) referenced in Section 3.06(g) shall be fully installed, and Seller must begin to provide SCE on a daily basis with all meteorological data to be collected by the equipment set forth in Exhibit T, at least sixty (60) days before Initial Synchronization, except for such exceptions as may be approved by SCE (such approval not to be unreasonably withheld).

*** End of EXHIBIT T ***

EXHIBIT U

Seller's Financial Information for Consolidation

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

EXHIBIT U*Seller's Financial Information for Consolidation*

Seller and SCE agree that if SCE provides Notice to Seller pursuant to Section 3.24:

- (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 designate items considered material to SCE.

Seller shall prepare its financial statements to be delivered under the terms of Section 3.24 and this Exhibit U 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.
- (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 3.24 and this Exhibit U.
- (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

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

- 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 3.24 and this Exhibit U 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.

*** End of EXHIBIT U ***

EXHIBIT V

Notice of SCE's Rights

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

EXHIBIT V

{SCE Comment: this form will need to be revised to conform to the particular state's form requirements if the property is not in California. If the Notice is signed in a state other than California then the notary forms will need to conform to the appropriate state notary forms.}

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, California 91770

Attention: J. Eric Isken, Esq.

APN: _____

(Space Above for Recorder's Use Only)

{SCE Comment: To Be Added in as Required}

NOTICE OF SCE's RIGHTS

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

EXHIBIT V

NOTICE IS HEREBY GIVEN THAT SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (“SCE”), and *[Seller’s Name]*, a *[Seller’s business registration]* (“Seller”), have entered into that Renewable Power Purchase and Sale Agreement dated as of _____ (as amended, supplemented and revised from time to time, the “Agreement”). Pursuant to the Agreement, SCE has the right to purchase all electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits (as such terms are defined in the Agreement) associated with or attributable to any generating facilities located or to be located on that certain real property (the “Property”) more particularly described on Exhibit A attached hereto and incorporated herein by the reference.

SCE’s rights shall terminate as set forth in the Agreement, but not later than _____. This Notice shall terminate automatically on _____, unless earlier terminated by SCE by recording a notice of termination.

Reference is made to the Agreement for the terms and conditions of SCE’s rights. In the event of a conflict between the terms of this Notice and the terms of the Agreement, the terms of the Agreement shall control.

[Signatures are on the following page]

[SELLER'S NAME]

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a *[Seller's business registration]*

a California corporation.

By: _____
Its: _____

By: _____
Its: _____

Date: _____

Date: _____

By: _____
Its: _____

Date: _____

EXHIBIT A

[Legal Description of Property]

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

)

COUNTY OF LOS ANGELES)

On _____ 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[SEAL]

**** End of EXHIBIT V ****

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