



**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

*between*

**SOUTHERN CALIFORNIA EDISON COMPANY**

*and*

**Goshen Phase II LLC**

(RAP ID# 6334)

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RAP ID# 6334, (Goshen Phase II LLC)

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**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**Goshen Phase II LLC**

**(RAP ID #6334)**

**PREAMBLE**

This Renewable Power Purchase and Sale Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the “Agreement”) is made and effective as of the following date: April 10, 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) **Goshen Phase II LLC** (“Seller”), a Delaware limited liability company whose principal place of business is at 700 Louisiana Street, 33rd Floor, Houston, Texas 77002.

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

**RECITALS**

Seller is willing to construct, own, and Operate an electric energy Generating Facility which qualifies as of the Effective Date as an eligible renewable energy resource under the State of California Renewable Portfolio Standard Program as codified at California Public Utilities Code Section 399.11, *et seq.*, and to sell all electric energy produced by the Generating Facility as specified herein together with all Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE; and

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*RAP ID# 6334, (Goshen Phase II LLC)*

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.

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**ARTICLE ONE. SPECIAL CONDITIONS**

1.01 Generating Facility. Name: Goshen Phase II Wind Farm.

- (b) Location of Site: 15 miles east of Idaho Falls, Idaho, as further described in Exhibit B.
- (c) Generation Facility description is located in Exhibit B.
- (d) Eligible Renewable Energy Resource Type: Wind.
- (e) Contract Capacity: Seller shall install 90 MW of Contract Capacity; *provided however*, that the Contract Capacity may be (i) increased or decreased by up to two (2) MW based on the Wind Turbines selected by Seller and (ii) increased as set forth in Section 2.08, and reduced as set forth in Section 3.04(f).
- (f) Expected Annual Net Energy Production.

The Expected Annual Net Energy Production is the value calculated in accordance with the formula set forth below. Except as provided in Section 6.01(c)(iv), the Expected Annual Net Energy Production does not represent an affirmative obligation of Seller to achieve such Expected Annual Net Energy Production during the Term of this Agreement.

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

Where:

- A = Contract Capacity in kW.
- B = The capacity factor to be based on the P50 Value in the Final Wind Report.
- C = 8,760 hours per year.

1.02 Forecasted Initial Operation Date. The Forecasted Initial Operation Date shall be October 1, 2010.

1.03 Startup Deadline.

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

The Startup Deadline shall be December 31, 2010; subject to extension as provided in this Agreement or as may be agreed to in a writing signed by both Parties.

1.04 Firm Operation Date.

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

1.05 Term.

The term of this Agreement (“Term”) shall commence upon Initial Operation as set forth in Section 2.04 and shall end on the last day of the calendar month which is twenty (20) years from the month of the Firm Operation Date.

1.06 Energy Price.

(a) Energy Price During Start Up Period.

During the Startup Period after satisfaction of the conditions in Section 2.03, the Energy Price shall be thirty dollars (\$30.00) per MWh.

(b) Energy Price During Term.

From the commencement of the Term until the expiration of the Term, the Energy Price shall be:

- (i) The applicable price in dollars per MWh specified in Exhibit T-1, as selected by SCE pursuant to Section 4.08, except as provided in Section 1.06(b)(ii), and subject to adjustment pursuant to Section 1.06(c); and
- (ii) During a Low Price Period, the applicable price in dollars per MWh as specified in Exhibit T-2 (such applicable price, the “Low Price”).

(c) Energy Price Adjustment.

If the Federal Production Tax Legislation is not in effect upon Initial Operation, then the Energy Price shall be the applicable price in dollars per MWh as specified in Exhibit T-3, subject to adjustment as set forth in Exhibit E.

1.07 Performance Assurance Amount.

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The Performance Assurance Amount shall be:

- (a) Two hundred seventy dollars (\$270.00) per kW of Contract Capacity if Seller elects *not* to provide the Secured Interests pursuant to Section 8.04; or
- (b) One hundred thirty-five dollars (\$135.00) per kW of Contract Capacity if Seller does provide such Secured Interests.

1.08 Seller's Guarantor.

- (a) Guarantor: BP Guarantor for so long as it meets the requirements of Section 8.02(c)(i) or any other person or persons meeting the requirements of Section 8.02(c) and as limited by Section 8.02(a).
- (b) Guaranty Amount: The Guaranty Amount shall be the amount set forth in Section 1.07 and may be subject to allocation between two (2) Guaranty Agreements as provided in Section 8.02(a).
- (c) Cross Default Amount: An amount equal to two percent (2%) of the shareholder equity in such Guarantor.

1.09 Seller's Debt-to-Equity Ratio.

Seller's Debt Percentage not to exceed ninety percent (90%). Seller's Equity Percentage not to be less than ten percent (10%).

## 1.10 Generating Facility Efficiency Guarantee:

<i>Term Years</i>	<i>Generating Facility Efficiency Guarantee</i>
1	0%
2	90.0%
3	90.0%
4	90.0%
5	90.0%
6	90.0%
7	90.0%
8	90.0%
9	90.0%
10	90.0%
11	90.0%
12	89.5%
13	89.0%
14	88.5%
15	88.0%
16	87.5%
17	87.0%
18	86.5%
19	86.0%
20	85.5%

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

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

**ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION**2.01 Effective Date.

This Agreement shall become effective on the Effective Date.

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

Subject to Seller's timely response to requests for information, SCE shall file with the CPUC the appropriate request for CPUC Approval within thirty (30) days after the Effective Date.

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 Agreement and Interconnection Certificate.

(i) Seller shall execute the Interconnection Agreement in accordance with the Transmission Provider Tariff.

(ii) Within thirty (30) days of obtaining any amendment to the GPII LGIA or any additional Interconnection Agreement, as the case may be, (the "Interconnection Agreement Due Date"), Seller shall deliver to SCE a copy of the fully executed amendment or additional Interconnection Agreement, as applicable.

(iii) Also by the Interconnection Agreement Due Date, Seller shall provide an Interconnection Certificate in the form of Exhibit Y and executed by Seller, containing certain representations and warranties with respect to all of such documents, which shall be attached to the Interconnection Certificate.

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(c) Regulatory and Governmental Filings.

- (i) Seller shall file all applications or other appropriate requests with the proper authorities for all Construction Permits and Material Permits as and when required in order to achieve Initial Operation as required under this Agreement. Seller shall diligently seek all Construction Permits and Material Permits, including promptly responding to any requests for information from the requesting authority.
- (ii) Within thirty (30) days following the Full Online Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility that may be required in addition to Seller's pre-certification for CEC Certification and Verification, dated May 15, 2008. Seller shall promptly respond to any requests for information from the requesting authority. SCE shall use commercially reasonable efforts to support Seller in filing its application or responding to a request for information described in this Section 2.02(c)(ii).

2.03 Conditions Precedent to Purchase and Sale of Product During Startup Period.

Seller shall deliver and sell to SCE, and SCE shall accept and purchase from Seller at the applicable Energy Price set forth in Section 1.06(a), the Product generated during the Startup Period if the following conditions are met:

- (a) Seller shall have met the conditions of Section 2.04(b)(i) through 2.04(b)(xi); and
- (b) At least one Wind Turbine is operating in parallel with the applicable Transmission Provider's electrical system.

2.04 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

The Term shall commence upon Initial Operation.

(b) Initial Operation.

Initial Operation shall be deemed to have been achieved on the Initial Operation Date.

Seller shall provide Notices to SCE of the expected Initial Operation Date thirty (30) days and also three (3) Business Days prior to such expected Initial

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Operation Date. The Initial Operation Date shall be no later than one hundred twenty (120) days from Initial Synchronization (the “Initial Operation Deadline”) plus any additional days as may be provided under Sections 4.06(a) and 5.03.

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

- (i) SCE shall have obtained or waived CPUC Approval, as provided herein;
- (ii) Subject to Sections 2.02(c)(ii) and Section 3.19, Seller shall obtain CEC Certification and Verification;
- (iii) Seller shall have obtained all access and use rights for the Site in accordance with Section 3.07;
- (iv) Seller shall have obtained all Material Permits;
- (v) Seller shall have executed an Interconnection Agreement in accordance with the Transmission Provider Tariff to interconnect the Generating Facility to the Transmission Provider’s electric system at the Delivery Point and provided to SCE an Interconnection Certificate;
- (vi) Seller shall have installed and placed in operation the stand-alone meteorological station required under Section 3.06(e);
- (vii) Seller shall provide to SCE the method of calculating Delivery Losses as such calculation is used by the Transmission Provider in the administration of agreements required for the transmission of electric energy from the Revenue Meter to the Delivery Point, consistent with the Metering description contained in Exhibit U;
- (viii) Seller shall demonstrate to SCE’s reasonable satisfaction that Seller has complied with its obligations with respect to the Revenue Meter as set forth in Section 3.06(a);
- (ix) Seller shall have furnished to SCE all insurance documents required under Section 10.10(b);
- (x) If required in accordance with Section 3.28, Seller shall have registered with NERC as the Generating Facility’s Generator Owner and Generator Operator;

- (xi) Seller shall be Forecasting and delivering electric energy to SCE at the Delivery Point in accordance with Section 3.13 and Exhibit D;
- (xii) Seller shall have posted with SCE the Performance Assurance required under Section 8.02 in the amount set forth in Section 1.07;
- (xiii) SCE and Seller shall have executed all Security Documents as may be required by Section 8.04; and
- (xiv) At least twenty (20) Wind Turbines shall be commissioned and Operating in parallel with the applicable Transmission Provider's electric system.

## 2.05 Termination Rights.

If either Party exercises a termination right as set forth in Section 2.05(a) or 5.05, a Termination Payment will be calculated in accordance with Section 6.03, the Forward Settlement Amount shall be zero dollars (\$0), and the terminating Party will be considered the Non-Defaulting Party; Seller shall be entitled to a return of any Development Security or Performance Assurance except for Development Security or Performance Assurance required to satisfy any Termination Payment calculated in accordance with Section 6.03 provided to SCE and a release of any Secured Interest and Security Interest granted 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, by January 1, 2010; provided that any Notice of termination pursuant to this section must be delivered by February 1, 2010.
- (ii) Either Party shall have the right to terminate this Agreement in the event of Force Majeure that is in accordance with Section 5.05.

### (b) 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.

(c) End of Term.

At the end of the Term as set forth in Section 1.05, unless earlier terminated as provided herewith, this Agreement shall automatically terminate.

2.06 SCE's Above MPR Cost Limit.

Seller acknowledges that pursuant to Public Utilities Code Section 399.15(d), the CPUC has established a limitation for SCE on the total costs SCE must expend above the applicable Market Price Referent for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under the RPS Legislation (the "Above MPR Cost Limit"). If SCE determines that the total cost per MWh that SCE will pay Seller pursuant to this Agreement exceeds the total cost per MWh using the Market Price Referent (the difference between the total cost per MWh under this Agreement and the total cost per MWh using the Market Price Referent, the "Above MPR Pricing"), and provides Notice of such determination to Seller, Seller shall make a good faith effort and take all necessary actions to assist SCE in its effort to qualify any Above MPR Pricing towards SCE's Above MPR Cost Limit; provided that in taking all necessary actions to assist SCE, Seller shall not be obligated to (i) modify the terms and conditions of this Agreement, including the Energy Price or (ii) incur any additional costs unless reimbursed for such costs by SCE. If Seller reasonably anticipates incurring any additional costs in order to take any actions requested by SCE pursuant to this Section 2.06, (i) Seller shall provide Notice to SCE of such anticipated costs, and (ii) SCE shall have the right, in its sole discretion, to (a) approve such costs or (b) waive Seller's obligation to take such actions, or any part thereof.

2.07 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) for periods prior to the termination of this Agreement;
- (ii) The obligation to make, and the right to receive, a Termination Payment under Section 6.03;

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- (iii) The indemnity obligations to the extent provided in Section 10.03;
  - (iv) The obligation of confidentiality set forth in Section 10.09;
  - (v) The right to pursue remedies under Sections 6.02 and 10.15;
  - (vi) The limitation of damages under Article Seven;
  - (vii) The obligation of Seller to make payments to SCE for periods prior to the termination of this Agreement for Transmission Provider Charges, Transmission Provider Sanctions, Transmission Service Charges, Ancillary Service Charges, Wind Integration Charges, and any SCE Penalty that may be due from Seller to SCE;
  - (viii) The obligation of SCE to make payments to Seller for periods prior to the termination of this Agreement for payment of the Energy Payment, Transmission Provider Charges, Transmission Provider Sanctions, Transmission Services, Ancillary Service Charges, Wind Integration Charges, and any SA-Curtailed Amounts that may be due from SCE to Seller;
  - (ix) 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 2.07(b) and 3.04(g), if applicable; and
  - (x) The obligation of Seller to post and to maintain Performance Assurance as of the extent required under Section 8.02.
- (b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from the Generating Facility after Certain Terminations of this Agreement.

If either Party terminates this Agreement, as provided in Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.04(d), 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.

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:

- (i) In the case of a termination by SCE as provided in Section 3.04(d), on terms and conditions materially similar to the terms and conditions contained in this Agreement, excluding any required changes in the Key Variable Terms, as determined by the Parties; and
- (ii) In the case of a termination by either Party as provided in Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), on terms and conditions materially similar to the terms and conditions contained in this Agreement, excluding:
  - (1) Any required changes in the Key Variable Terms; and
  - (2) Any change in the Energy Price based upon documented costs that Seller incurred reasonably and in good faith under the circumstances in order to make material modifications to the Generating Facility reasonably necessary to overcome the conditions leading to such termination; *provided*, Seller shall provide documentation of such costs and demonstrate the reasonableness thereof to the Technical Consultant at the time of the proposed offer to SCE and the Technical Consultant deems such costs to be reasonable based on Prudent Electrical Standards.

If SCE fails in either case to accept such offer within thirty (30) days after SCE's receipt thereof; provided that in the case of an offer made pursuant to clause (ii), Seller shall not enter into an agreement for sale with a third party at a lower price than offered to SCE unless Seller offers SCE the same price and SCE fails to accept such revised offer within thirty (30) days after SCE's receipt thereof.

#### 2.08 Increased Capacity.

- (a) By Notice from Seller to SCE delivered prior to March 1, 2010, Seller may add up to an additional 40 MW of capacity (the "Additional Capacity") to the initial 90 MW of Contract Capacity proposed as of the Effective Date (the "Base Capacity") for a maximum Contract Capacity of 130 MW.
- (b) Seller may elect that the Additional Capacity have the same Forecasted Initial Operation Date, Initial Operation Date, Startup Deadline and Firm Operation Date as the Base Capacity or a Forecasted Initial Operation Date, Initial

Operation Date, Startup Deadline and Firm Operation Date no later than eighteen months after the correlative dates for the Base Capacity.

- (c) If Seller elects to increase the Contract Capacity by the Additional Capacity, then the requirements of Section 3.04(a) and Section 3.04 (b) shall apply to the Additional Capacity and, as of the Firm Operation Date for the Additional Capacity:
- (i) The Contract Capacity set forth in Section 1.01(e) shall be adjusted to include the Demonstrated Contract Capacity for the Additional Capacity;
  - (ii) The Expected Annual Net Energy Production set forth in Section 1.01(f) shall be calculated using such adjusted Contract Capacity;
  - (iii) 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;
  - (iv) If the Demonstrated Contract Capacity for the Additional Capacity is less than the Additional Capacity proposed by Seller in its Notice pursuant to Section 2.08(a) (any such shortfall, the “Additional Unincluded Capacity”) then, the Unincluded Capacity shall be deemed to include the Additional Unincluded Capacity and the provisions of Section 3.04(g) shall apply;
  - (v) Any terms and conditions of this Agreement, including Section 6.01(c), shall be deemed to apply to such adjusted Contract Capacity, Expected Annual Net Energy Production, Performance Assurance Amount and Unincluded Capacity; and
  - (vi) The total limitations on liability for Energy Replacement Damages Amount set forth in Section 3.05(f) shall increase by a dollar amount equal to (x) the original total limitation amount multiplied by (y) a fraction where the numerator is the adjusted Contract Capacity and the denominator is the original Contract Capacity.
- (d) In the event that Seller elects to install the Additional Capacity, then the Parties shall negotiate in good faith an amendment of this Agreement to effect the changes in parameters under this Agreement contemplated by this Section 2.08.

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

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

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

- (a) **Metered Amounts.** During the Startup Period after satisfaction of the conditions set forth in Section 2.03 and during the Term: (i) Seller shall convey to SCE, and, subject to Section 4.01, SCE shall accept, the *entire* Metered Amounts, and (ii) Seller shall convey title to and risk of loss of all Metered Amounts to SCE (and, subject to Section 4.01, SCE shall accept same) 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 hereby grants, pledges, assigns and otherwise commits to SCE the full Contract Capacity in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings. In addition, Seller hereby grants, pledges, assigns and otherwise commits to SCE any and all Capacity Attributes and Resource Adequacy Benefits.

Seller represents and warrants to SCE that Seller:

- (i) Holds all rights and title to all Capacity Attributes and Resource Adequacy Benefits, if any; and
- (ii) Has not used, granted, pledged, assigned or otherwise committed any portion of the Generating Facility to meet the resource adequacy requirements of, or to confer Capacity Attributes or Resource Adequacy Benefits upon, any entity other than SCE.
- (d) **Further Action by Seller.** Subject to the limitations set forth in Section 3.19(b), Seller shall, at its own cost, take all actions within its control and execute all documents or instruments necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits (collectively, the "Bundled Attributes") for SCE's sole benefit from Initial Synchronization through the Term, which actions shall include:

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- (i) Cooperating with and encouraging the California or other regional entity responsible for resource adequacy administration relating to this Agreement 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 administrative obligations under current and future Transmission Provider Tariff and, if applicable, CAISO tariff provisions that address resource adequacy, including provisions regarding performance obligations and penalties; and
- (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 the registration, transfer or ownership of Green Attributes associated with the Generating Facility.

Seller shall not be deemed to have failed to comply with its obligations under this Section 3.01 in the event that the Parties are unable to effectuate the use of the Bundled Attributes for SCE’s benefit because of the following reasons:

- (x) A change in Applicable Law (including interpretation of Applicable Law by any Governmental Authority) relating to any of the Bundled Attributes occurring after the Effective Date, provided that Seller shall have made commercially reasonable efforts to effectuate the use of the Bundled Attributes under Applicable Law but subject to the limitations set forth in Section 3.19(b);
- (y) The inability of SCE to receive the benefits of the Bundled Attributes in California other than as a result of a breach by Seller of its obligations under this Agreement; or
- (z) A breach by SCE of any obligation under this Agreement that prevents Seller from performing such obligations.

The Parties agree that under Applicable Law as of the Effective Date, the location of the interconnection of, and delivery of electrical energy and the Bundled Attributes from, the Generating Facility to the Delivery Point do not preclude SCE from receiving the benefits of the Bundled Attributes.



SCE shall use commercially reasonable efforts to support Seller in effectuating the use of the Bundled Attributes for SCE's benefit.

- (e) Exclusive Rights. Seller has not pledged, assigned or otherwise committed the Green Attributes to any person other than SCE. Subject to Section 3.19, SCE will have the exclusive right, at any time or from time-to-time during the Term, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such 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, except that Seller shall have the right to sell electric energy generated by the Generating Facility prior to Initial Operation and any Green Attributes related to such electric energy generated by the Generating Facility prior to Initial Operation and to retain all proceeds of such sales if SCE is not obligated to purchase such Product pursuant to Section 2.03.

3.02 [Intentionally Omitted.]

3.03 Permits and Interconnection.

- (a) Seller shall be responsible for obtaining and maintaining any and all Interconnection Agreements and Permits required to effect delivery of the electric energy from the Generating Facility to the Delivery Point. Seller shall be responsible for all costs and any other charges directly caused by, associated with, or allocated to the Permits and any applicable interconnection agreement.
- (b) If SCE requests Seller to initiate discussions regarding the establishment of one alternative delivery point with a second Transmission Provider(s) for additional interconnections at the Goshen Substation to a different Control Area (the "Additional Delivery Point"), the Parties shall enter into good faith negotiations regarding (i) the scope of Seller's discussion with a second Transmission Provider, (ii) the timing for such discussions, (iii) the parameters by which such Additional Delivery Point might revert back to Seller, and (iv) all applicable costs allocations related to such discussions. Once Seller and SCE have negotiated and executed mutually acceptable amendments to this Agreement covering, among other things, the agreements of the Parties in

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respect to clauses (i) through (iv) above, Seller agrees to engage in such discussions with the agreed upon such second Transmission Provider in order to attempt to obtain an interconnection agreement for the Additional Delivery Point. SCE shall have the right at any time prior to the execution of any such amendment referred to in the preceding sentence and in its sole discretion, to end such discussions without penalty or cost; *provided*, SCE shall reimburse Seller for any costs incurred in connection with discussions with such second Transmission Provider. In the event that SCE terminates such discussions, SCE shall reimburse Seller for any out of pocket expenses incurred in connection with such discussions; provided that Seller shall provide Notice to SCE of its reasonably anticipated out of pocket costs, and (ii) SCE shall have the right, in its sole discretion, (a) to approve such expenditures or (b) request Seller not to incur such expenses (in which event Seller may elect to terminate such discussions).

- (c) Seller shall deliver electric energy from the Generating Facility to the Delivery Point. Seller shall pay for all costs and charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Delivery Point.

#### 3.04 Development Security.

- (a) Development Security Amount.

Seller shall post and thereafter maintain development security (“Development Security”) equal to Ten dollars (\$10) for each kilowatt of Contract Capacity specified in Section 1.01(e).

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 Development Security.

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 after CPUC Approval is obtained or waived by SCE in its sole discretion. The Development Security shall be held by SCE and shall be in the form of either a cash deposit or a Letter of Credit;

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- (ii) Any Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 4.05 of this Agreement; and
  - (iii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.
- (c) Daily Delay Liquidated Damages to Extend Startup Deadline.
- (i) Seller may elect to extend the Startup Deadline (in addition to and without prejudice to any extension made in accordance with Sections 4.06(a) and 5.03 of this Agreement), by paying to SCE cash in an amount equal to one percent (1%) of the Development Security per day for each day (or portion thereof) from and including the Startup Deadline to and excluding the Initial Operation Date (“Daily Delay Liquidated Damages”).
  - (ii) To extend the Startup Deadline, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide SCE with Notice of its election to extend the Startup Deadline along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Startup Deadline extension period.
  - (iii) 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.
  - (iv) 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.
  - (v) Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Startup Deadline was actually extended.
  - (vi) 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.

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- (vii) Seller shall not be assessed Daily Delay Liquidated Damages during any extension of the Startup Deadline pursuant to Sections 4.06(a) and 5.03.
- (d) Forfeiture of Development Security.
  - (i) Subject to Seller's right to extend the Startup Deadline as provided in Section 3.04(c) and Section 5.03 (for Force Majeure where Seller is the Claiming Party), in the event that there is a default under Section 6.01(c)(x), SCE shall be entitled to retain the entire Development Security and terminate this Agreement and neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.
  - (ii) Seller shall not be obligated to replenish any Development Security that has been drawn by SCE provided that Seller has posted the full amount of Development Security as required pursuant to Section 3.04(b).
- (e) 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:

- (i) Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(c), Seller demonstrates the full Contract Capacity in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date; or
  - (ii) If this Agreement is terminated in accordance with Section 2.05(a) or 5.05; *provided that*, a termination under Section 5.05 shall only entitle Seller to a return of the Development Security if the termination is based upon a Force Majeure which prevents Seller from achieving Initial Operation by the Startup Deadline.
- (f) Deficient Installation of Contract Capacity; Partial Forfeiture and Partial Return of the Development Security.

If, on or before the Firm Operation Date, Seller has achieved Initial Operation by the Startup Deadline as provided in Section 3.04(c), but is only able to demonstrate a portion of the Contract Capacity in accordance with the procedure set forth in Exhibit L (the "Demonstrated Contract Capacity") by the Firm Operation Date, *then* Seller shall only be entitled to a return of the portion of the Development Security equal to the product of ten dollars (\$10) per

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kilowatt times the kilowatts of Demonstrated Contract Capacity; *provided however*, that if all or a portion of such shortfall in Contract Capacity is attributable to Force Majeure, then Seller shall be entitled to a return of the Development Security for that portion of the shortfall attributed to the Force Majeure.

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

In addition, as of the Firm Operation Date:

- (i) If the Contract Capacity set forth in Section 1.01(e) is greater than the Demonstrated Contract Capacity, the Contract Capacity set forth in Section 1.01(e) shall be reduced to an amount equal to the Demonstrated Contract Capacity;
  - (ii) The Expected Annual Net Energy Production set forth in Section 1.01(f) shall be calculated using such adjusted Contract Capacity;
  - (iii) 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; and
  - (iv) Subject to Section 3.04(g), neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Contract Capacity (“Unincluded Capacity”).
- (g) 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 a generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE’s Notice to Seller of its partial forfeiture of the Development Security pursuant to Exhibit L except as provided in this Section 3.04(g).
  - (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

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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 (provided that if the Unincluded Capacity resulted from a Force Majeure event, then the terms and conditions shall be materially similar to the terms and conditions contained in this Agreement, excluding any difference in the contract capacity, the equipment, the effective date, the forecasted initial operation date, the startup deadline, and the milestone schedule of such agreement, as proposed by Seller or Seller's Affiliate) and SCE fails to accept such offer within thirty (30) days after SCE's receipt thereof. Any Seller's Affiliate wishing to enter into a contract or sale must:

- (1) Build a new generating facility with wind turbines not included in 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; and
- (3) Meter such additional generating capacity separately from the Generating Facility, 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 Obligation.

Beginning on the commencement of the first Term Year and for every Term Year thereafter, Seller shall be subject to the electric energy delivery requirements and damages for failure to perform as set forth in this Section 3.05.

#### (a) Performance Requirements.

##### (i) Seller's Annual Energy Delivery Obligation.

Seller's Annual Energy Delivery Obligation for each Term Year shall be calculated in accordance with the following formula:

SELLER'S ANNUAL ENERGY DELIVERY OBLIGATION,  
in kWh = A x B

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Where:

A = Term Year Estimate of Metered Amounts calculated by the Generating Facility Performance Model, in kWh.

B = Generating Facility Efficiency Guarantee for such Term Year, set forth in Section 1.10.

(ii) Event of Deficient Energy Deliveries.

At the end of each Term Year, if the sum of Qualified Amounts plus Lost Output and SA-Curtailed Amounts, if any, during all Settlement Intervals for such Term Year, in kWh, does not equal or exceed Seller's Annual Energy Delivery Obligation, *then* an Event of Deficient Energy Deliveries shall be deemed to have occurred.

(b) Energy Replacement Damage Amount.

- (i) If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.05(a) above, the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's Annual Energy Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages an amount which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform (the "Energy Replacement Damage Amount").
- (ii) Within one hundred twenty (120) days after the end of each 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; *provided however* Seller shall not be assessed any Energy Replacement Damage Amount until after the Independent Performance Engineer has completed the Generating Facility Performance Model in accordance with Section 3.18; and *provided further* that SCE may only provide the calculation of the Energy Replacement Damage Amount for the, second, third, and fourth Term Years within one hundred twenty (120) days after the end of the fourth Term Year.

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- (iii) 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.
  - (iv) 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.
  - (v) 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 Eleven.
- (c) Generating Facility Performance Model Reports.

In order to support the calculations to be made pursuant to Section 3.05(b) and Exhibit F, Seller shall prepare and provide to SCE, by the twentieth (20<sup>th</sup>) Business Day following the end of each Term Year one Generating Facility Performance Model Report for such Term Year.

- (d) Modifications to Generating Facility Performance Model.
- (i) To the extent that meteorological data is not available due to the Meteorological Station providing insufficient data for any given Settlement Interval ("Unavailable Intervals"), then Seller shall adjust the Generating Facility Model for all Unavailable Intervals in a manner consistent with Prudent Electrical Practices.

Seller shall provide Notice to SCE within sixty (60) days following the last day of the month in which the Unavailable Intervals occurred, that clearly identifies all Unavailable Intervals, including a detailed explanation of, and rationale for, its methodology of adjusting the Generating Facility Model for the Unavailable Intervals ("Settlement Interval Adjustment").

SCE shall have thirty (30) days after receipt of Notice from Seller to dispute any such Settlement Interval Adjustment by sending Notice of such dispute together with an explanation therefor. If SCE disputes any Settlement Interval Adjustment, the Parties shall negotiate in good faith



to resolve any Disputes and Seller shall, as part of such good faith negotiations, promptly provide information or data relevant to the Settlement Interval Adjustment. If the Parties are unable to resolve such Dispute within thirty (30) days after SCE provides Notice to Seller of such Dispute, either Party may submit the Dispute to mediation and arbitration as provided in Article Eleven.

(ii) Upon Seller's request, and at Seller's own expense, the Independent Performance Engineer shall recalibrate the Generating Facility Performance Model due to any changes in the meteorological equipment.

(e) 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 during the Term, as provided in Section 3.01.

(f) Limitation of Energy Replacement Damage Amount Payable by Seller.

THE ENERGY REPLACEMENT DAMAGE AMOUNT CALCULATED PURSUANT TO THIS SECTION 3.05 SHALL (I) FROM THE EFFECTIVE DATE OF THIS AGREEMENT THROUGH THE FIRST TERM YEAR, BE INAPPLICABLE, AND (II) FOR THE DURATION OF THE TERM, SHALL NOT EXCEED (A) FOR THE SECOND TERM YEAR, \$1 MILLION, (B) FOR THE THIRD TERM YEAR, \$2 MILLION, (C) FOR THE FOURTH TERM YEAR, \$3 MILLION, (D) FOR THE FIFTH TERM YEAR THROUGH AND INCLUDING THE EIGHTEENTH TERM YEAR, \$4 MILLION PER YEAR, (E) FOR THE NINETEENTH TERM YEAR, \$3 MILLION, AND (F) FOR THE TWENTIETH TERM YEAR, \$2 MILLION. UNDER NO CIRCUMSTANCE SHALL THE AMOUNTS PAID OR PAYABLE BY SELLER UNDER SECTION 3.05 EXCEED AN OVERALL LIFETIME LIABILITY CAP OF \$20 MILLION.

IN THE EVENT THAT ANY AMOUNTS PAID OR PAYABLE BY SELLER UNDER THIS SECTION 3.05 REACH THE LIABILITY CAPS SET FORTH ABOVE, THIS AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT AND SUCH LIMITATIONS SHALL NOT GIVE RISE TO A TERMINATION RIGHT BY EITHER PARTY UNDER THIS AGREEMENT.

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

Seller shall install and pay for any and all metering services and related equipment required by the Transmission Provider to be installed under the Standard Large Generator Interconnection Agreement (as defined in the Transmission Provider Tariff) to be executed by Transmission Provider and Seller.

Seller shall take all actions and execute all documents reasonably necessary to grant SCE (or its designated Scheduling Agent) real-time access to communications, Metering and telemetry with respect to the Meter data that underlies the determination of the Metered Amounts.

Seller shall install, or cause to be installed, at the Wolverine Creek Generation Interconnection LLC Phase I collector substation (as further described in Exhibit U) a Meter to accurately measure the Metered Amounts from the Generating Facility (the “Revenue Meter”), where such Meter installation is more fully described in Exhibit U. The Revenue Meter shall utilize a compensation algorithm to adjust the measurement of electric energy produced by the Generating Facility for Delivery Losses.

All obligations of Seller and all rights granted to SCE with respect to the Revenue Meter shall be subject to the terms of the Interconnection Agreement.

**(b) Access to Meter.**

(i) Subject to Section 3.17, Seller hereby grants SCE reasonable access to the Revenue Meter for meter readings and any purpose necessary to effectuate this Agreement.

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

(ii) At least sixty (60) days prior to the Initial Synchronization, Seller shall provide instructions or other documentation required by the Transmission Provider in order to grant SCE real-time access to the Revenue Meter and to Seller’s settlement data.

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

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(c) Meter Maintenance.

- (i) Seller shall test and calibrate (or cause to be tested and calibrated) the Revenue Meter as necessary and in accordance with any applicable Transmission Provider requirements, but in no event shall the period between testing and calibration dates be greater than twenty four (24) months.
- (ii) Seller shall replace (or cause to be replaced) the Revenue Meter battery at least once every thirty six (36) months or such shorter period as may be recommended by the Transmission Provider or the battery manufacturer.

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

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

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

- (i) Seller shall install and pay for equipment, including a remote terminal unit located on Seller's premises and compatible with SCE's supervisory control and data acquisition system, required by SCE to provide SCE the ability to monitor, in real time, all electric energy generated by the Generating Facility.
- (ii) The data from such equipment shall be centralized into a common supervisory and data acquisition system, otherwise known as SCADA. Such equipment shall be accessed by SCE via SCE's Generation Management System.
- (iii) Seller shall provide SCE real-time telemetry utilizing a pathway and network protocol approved by SCE.
- (iv) The connection shall be bidirectional in nature and used to exchange all data points to and from SCE's Generation Operation Center.

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- (v) The above mentioned connections and data transfer shall be included in the systems engineering tasks as a part of the construction of the Generating Facility, and shall be fully functional prior to Initial Operation.

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

No later than one (1) month prior to Initial Synchronization, Seller, at its own expense, shall install and maintain at least two (2) stand-alone meteorological stations at the Generating Facility in accordance with Exhibit S to monitor and report weather data to the existing SCE weather station data collection system and, if required, to the Transmission Provider.

The meteorological stations shall be equipped to measure and record the minimum data, if any, as may be required by SCE, the Transmission Provider or any applicable Governmental Authority, in the manner specified by SCE, the Transmission Provider or any applicable Governmental Authority, in accordance with Exhibit S.

Also no later than one (1) month prior to Initial Synchronization, Seller shall communicate meteorological data to SCE via a system consistent with SCE's employed methods at the time of installation. Telemetering equipment shall be designed to function in accordance SCE's communication system as more specifically described in Exhibit S. Seller shall submit to SCE for review Seller's technical specifications for the meteorological station(s) along with a site plan showing the location of the station(s), the location of all Wind Turbines, and the wind rose for the Site, as applicable.

If SCE reasonably concludes that the meteorological stations do not provide sufficient data to accurately forecast the Generating Facility's Metered Amounts, SCE shall provide Notice to Seller instructing Seller to install one additional meteorological station. Seller shall install, at Seller's expense, such additional meteorological station at another location on the Site approved by SCE and in accordance with the technical and Scheduling requirements in Exhibit S, if any, of the Transmission Provider, any applicable Governmental Authority, and SCE.

If Seller reasonably concludes that the costs associated with the installation of the additional meteorological station is not economically justified by the increase in forecasting accuracy, Seller shall submit a Notice to SCE protesting such installation. The Parties shall negotiate in good faith to resolve any such Dispute and the Parties shall, as part of such good faith negotiations, promptly provide information or data relevant to substantiate their respective positions. If the Parties are unable to resolve such Dispute within thirty (30) days after

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the Seller provides Notice of such Dispute, either Party may submit the Dispute to dispute resolution as provided in Section 11.04. Furthermore, Seller shall commence installation of the additional meteorological station on the first Business Day following Notice by either Party that such Dispute is being submitted to the Technical Consultant for resolution, and Seller shall expeditiously complete the installation in a manner consistent with Prudent Electrical Practices.

Upon resolution of the Dispute pursuant to Section 11.04, if the resolution is in favor of the Seller, SCE shall reimburse Seller for all costs, including simple interest at the Interest Rate, associated with the meteorological station installation within twenty (20) days after receipt of such invoice from Seller; provided, such invoice shall include a detailed list of all such costs. If the resolution is in favor of SCE, all meteorological station installation costs shall be borne by Seller.

- (f) Real-Time Communication of Availability.
- (i) Prior to Initial Synchronization, Seller shall install a telecommunication system to interface with the Web Client to provide SCE with Seller's Real-Time Availability.
  - (ii) If Seller installs such telecommunication system, Seller shall 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:
    - (1) Inoperable telecommunications path;
    - (2) Inoperable software; or
    - (3) Faulty instrumentation.
  - (iv) Seller shall submit an Actual Availability Report pursuant to Section 3.22 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) On or before Initial Synchronization and at all times during the Term, Seller shall have Site Control.

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- (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.
- (d) Site Control by Seller shall not preclude Seller, Seller's Affiliates or third parties from having rights to portions of the Site not utilized by the Generating Facility or non-exclusive rights to common areas for the purpose of developing, constructing and operating other winds energy generating facilities.

### 3.08 Site Location.

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

Seller may, with SCE's prior written consent, change the location of the Site; *provided that*, the Delivery 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.

Seller shall provide Notice to SCE within five (5) Business Days after an actual or pending change in the status of any of the following after the Effective Date (which in the case of a pending change described in clauses (b) or (c) shall be within five (5) Business Days after the time such change is publicly disclosed):

- (a) Seller's exact and complete name, form of organization and state of incorporation or organization; address of Seller's principal place of business;
- (b) Seller's members, Seller's Guarantor(s), or if either BP plc or Veolia Environnement ceases to hold an equity interest in Seller, either directly or indirectly, or following the divestiture of BP plc's or Veolia Environnement's direct or indirect equity interest in Seller, the ultimate parent company (to be agreed by the Parties at the time) of the transferee who acquired BP plc's or Veolia Environnement's direct or indirect equity interest in Seller ceases to hold such equity interest in Seller, directly or indirectly;
- (c) Seller's or Seller's Guarantor's Moody's 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; and

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- (d) Seller's construction period financing and operating period financing.

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 Operation Date, the following Generating Facility information:
  - (i) Site plan drawings for the Generating Facility;
  - (ii) Electrical one line diagrams;
  - (iii) Control and data acquisition details and configuration documents;
  - (iv) Major electrical equipment specifications;
  - (v) General arrangement drawings;
  - (vi) Longitude and latitude of each generator;
  - (vii) Wind Turbine specification; and
  - (viii) Wind energy collection grid diagrams.
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in (i) the manufacturer or size of Wind Turbines, (ii) any other major component of the Generating Facility, (iii) the layout of Seller's Generating Facility that is reasonably likely to have a material impact on the output, electrical or environmental characteristics of the Generating Facility, or (iv) the expansion or modification of the Wolverine Creek Generation Interconnection LLC Phase I collector substation to integrate additional generation, 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.

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**3.11 Operation and Record Keeping.**

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Seller shall keep a daily operations log for the Generating Facility that shall include the following information:
  - (i) Availability;
  - (ii) Circuit breaker trip operations;
  - (iii) Any significant events related to the Operation of the Generating Facility;
  - (iv) Real and reactive power and energy production;
  - (v) Changes in Operating status;
  - (vi) Protective apparatus operations;
  - (vii) Any unusual conditions found during inspections;
  - (viii) Electric energy production, fuel consumption and efficiency (if applicable); and
  - (ix) Status and settings of generator controls including automatic voltage regulator and power system stabilizer.
- (c) Seller shall maintain complete records of the Generating Facility's wind speeds and other pertinent meteorological conditions and operational status of each Wind Turbine as provided in Section 3.06.
- (d) 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. Such information in (a) and (b) above shall be provided or made available to SCE within twenty (20) days after any Notice from SCE requesting such information.

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

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large electric generators if Seller is required to be a registered Generator Owner pursuant to the NERC Reliability Standards.

- (e) Upon receipt of a Notice from the Transmission Provider (or Seller's Generator Operator) or from SCE (to the extent SCE received such Notice from the Transmission Provider) instructing Seller to curtail the production of the Generating Facility, Seller shall promptly curtail the production of the Generating Facility.
- (f) Information maintained pursuant to this Section 3.11 shall be kept for the lesser of seven (7) years or the remaining Term of this Agreement or as may be required by Applicable Laws, and shall be provided or made available to SCE within twenty (20) days after any Notice.

### 3.12 Tariff Compliance.

Seller shall comply with all applicable Transmission Provider Tariff and Tariff protocols required for Seller to deliver electric energy at the Delivery Point and, at SCE's sole cost and expense, for the Scheduling Agent to receive, and submit Schedules for, the electric energy produced by the Generating Facility.

### 3.13 Forecasting.

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

### 3.14 Scheduled Outages.

- (a) Using the "Web Client", no later than five (5) Business Days prior to the date required by the Transmission Provider for submitting the Generating Facility's planned maintenance schedules, and at least sixty (60) days prior to Initial Synchronization, Seller shall submit to SCE its schedule ("Outage Schedule") of proposed planned maintenance outages and of all outage information submitted by Seller directly to the Transmission Provider as required by the Transmission Provider. If Seller fails to submit an Outage Schedule for any period as required under this Section 3.14, then Seller shall not be permitted to schedule or have any planned Maintenance Outages with respect to such period.
- (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) 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) after the condition causing the change becomes known to Seller.
- (e) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

### 3.15 Progress Reporting Toward Meeting Milestone Schedule.

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

Seller shall include in such report a list of all letters, notices, applications, approvals, authorizations, filings, permits and licenses relating to any Transmission Provider or Governmental Authority 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.

### 3.16 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All applications and approvals relating to CEC Certification and Verification, and all Permits;

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- (b) The Interconnection Agreement and any other agreements for the interconnection of the Generating Facility to the Transmission Provider's electric system;
- (c) A copy of the Final Wind Report;
- (d) The final reports on the Generating Facility, if any, done for Seller by an independent engineer; and
- (e) The following information at least thirty (30) days prior to Initial Synchronization:

For the Revenue Meter:

- (i) Generating Station/Unit ID;
- (ii) Password;
- (iii) Data path (network (ECN) or modem);
- (iv) If modem, phone number;
- (v) Copy of meter certification; and
- (vi) Description of any compensation calculations including Delivery Losses.

For the Generating Facility:

- (vii) Utility transmission/distribution one line diagram;
- (viii) Physical location, address or descriptive identification;
- (ix) Latitude and longitude; and
- (x) Confirmation of telephone numbers and other contact information contained in Exhibit C.

### 3.17 SCE's Access Rights.

Upon reasonable notice to Seller, and to the Transmission Provider as applicable, SCE shall have the right of ingress and egress to examine the Site and Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC; provided that such access shall be subject to SCE complying with all Site and

Generating Facility rules and guidelines, and applicable Transmission Provider policies, relating to protection of health, safety and the environment of which Seller or the Transmission Provider, as applicable, has made SCE aware.

3.18 Independent Performance Engineer.

- (a) Seller shall cooperate with the Independent Performance Engineer's development of the:
  - (i) Generating Facility Performance Model;
  - (ii) Generating Facility Performance Model Report; and
  - (iii) Generating Facility Power Curve.
- (b) Seller's responsibilities to cooperate with the Independent Performance Engineer shall include:
  - (i) Submitting its procedures for the collection of Actual Site Wind Data to SCE for review and approval, and the Independent Performance Engineer, for review and comment, nine (9) months before the expected Initial Operation Date;
  - (ii) Submitting its procedures for the maintenance and calibration of the Meteorological Equipment to SCE for review and approval, and the Independent Performance Engineer for review and comment nine (9) months before the expected Initial Operation Date;
  - (iii) Providing data collected during the operation of the Generating Facility during the first, second, third and fourth Term Years to the Independent Performance Engineer, including:
    - (1) Data as measured by the Meteorological Equipment;
    - (2) Lost Output Report; and
    - (3) Actual Availability pursuant to Exhibit R;
  - (iv) Providing the Independent Performance Engineer with access to Seller's:
    - (1) Generating Facility;
    - (2) Generating Facility construction contractor;

- (3) Generating Facility operators;
- (4) Wind Turbine manufacturer's representatives; and
- (5) Seller's independent wind resource expert;

provided that in each case the Independent Performance Engineer (1) gives reasonable notice to Seller, and (2) complies with all requirements and procedures relating to the protection of health, security, safety, and environment, of which Seller or the Transmission Provider, as applicable, has made the Independent Performance Engineer aware, applicable at the relevant sites of Seller and its affiliated companies and contractors;

- (v) Providing the Independent Performance Engineer with the manufacturer's specifications, data sheets, performance characteristics and power curves for the Wind Turbines which Seller is able to obtain with commercially reasonable efforts;
  - (vi) Providing the Independent Performance Engineer with design drawings and engineering specifications for the Generating Facility, including:
    - (1) Site plan drawings;
    - (2) Topographic maps; and
    - (3) Electrical one-line diagrams;
  - (vii) Providing the Independent Performance Engineer with a copy of the Final Wind Report and any updates thereto;
  - (viii) Reviewing and commenting on the design criteria for the development of the Generating Facility Power Curve;
  - (ix) Reviewing and commenting on the design criteria for the development of the Generating Facility Performance Model;
  - (x) Reviewing and commenting on the Generating Facility Power Curve; and
  - (xi) Reviewing and commenting on the Generating Facility Performance Model.
- (c) Seller and SCE shall mutually agree upon (i) the design criteria for the development of the Generating Facility Performance Model and the Generating

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Facility Power Curve and (ii) any Generating Facility Performance Model and Generating Facility Power Curve developed by the Independent Performance Engineer. The parties shall instruct the Independent Performance Engineer to prepare the Generating Facility Performance Model and the Generating Facility Power Curve in draft by the end of the third Term Year and a final version prior to the date sixty (60) days after the end of the fourth Term Year. If the Parties are unable to reach agreement pursuant to this Section 3.18(c), then the Parties shall submit any Dispute to the Technical Consultant and such Technical Consultant shall resolve any such Dispute as set forth in Section 11.04.

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

- (a) Subject to SCE's obligations in the last paragraph of this Section 3.19(a) and the limitations in Section 3.19(b), 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, and Seller shall be deemed to have complied with its obligations under this Section 3.19 (including, as a result, Sections 6.01(c)(vii), 6.01(c)(xvi) and 10.02(a)(v)), to the extent that Seller is unable to obtain and maintain CEC Certification and Verification because of the following reasons:
- (i) A change in Applicable Law (including interpretations of Applicable Law by any Governmental Authority) relating to CEC Certification and Verification occurring after the Effective Date;
  - (ii) A failure to meet the delivery or transmission requirements, if any, necessary for Seller to obtain and maintain CEC Certification and Verification; or
  - (iii) A breach by SCE of any obligation under this Agreement adversely affecting Seller's ability to perform such obligations;

provided further, that with respect to the circumstances described in Section 3.19(a)(i), Seller has made commercially reasonable efforts to comply under the then-current Applicable Law, subject to the limitations set forth in Section 3.19(b) below.

The Parties agree that under Applicable Law as of the Effective Date, the location of the interconnection of, and delivery of electrical energy from, the Generating Facility at the Delivery Point meets interconnection requirements for the Generating Facility to receive CEC Certification and Verification.

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SCE shall use commercially reasonable efforts to support Seller for Seller to obtain and maintain CEC Certification and Verification.

- (b) Notwithstanding the foregoing, Seller will not be required to incur out of pocket costs in excess of an amount equal to five hundred dollars (\$500) per MW of Contract Capacity (the “Annual Compliance Cap”) within any given year due to a change in Applicable Law following the Effective Date, but in no event greater than an amount equal to two thousand dollars (\$2,000) per MW of Contract Capacity over the Term (the “Term Compliance Cap”), to obtain and maintain such CEC Certification and Verification, comply with Seller’s obligations under Section 3.01(d) or otherwise comply with requirements applicable to Seller with respect to WREGIS, RPS Legislation, Green Attributes, Capacity Attributes or Resource Adequacy Benefits, subsequent to a change in the rules or regulations relating to any of the foregoing occurring after the Effective Date (the “Compliance Actions”).

If Seller reasonably anticipates the need to incur out of pocket expenses in excess of the Annual Compliance Cap or Term Compliance Cap in order to take any Compliance Action, (i) Seller shall provide Notice to SCE 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 have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and, within such time, may agree to reimburse Seller for all or some portion of the costs that exceed the Annual Compliance Cap or Term Compliance 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 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 metering the Metered Amounts or for delivering the Product to SCE at the Delivery Point.

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

Commencing upon Initial Operation and continuing throughout the Term, Seller shall calculate Lost Output and prepare and provide to SCE a Lost Output Report regarding Lost Output or the lack thereof by the last Business Day of the following 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 with respect to Seller's Lost Output Report.

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

Seller shall have no right to claim any Lost Output for any month that an original Lost Output Report (with respect to such month) was not provided to SCE; provided, however, Seller may supplement the amount of Lost Output claimed or not claimed ("Supplemental Lost Output") for the month with a supplemental Lost Output Report ("Supplemental Lost Output Report") if Seller:

- (i) Can demonstrate that it neither knew nor could have known through the exercise of reasonable diligence about the Supplemental Lost Output within the thirty (30) day period at the end of which the original Lost Output Report in question was due under Section 3.21(a); and
- (ii) 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.

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**3.22 Actual Availability Report.**

- (a) Commencing upon Initial Operation and continuing throughout the Term, if at any time Seller does not provide Real-Time Availability for longer than twenty four (24) continuous hours, 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 R 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 necessary for SCE to audit and verify any matters set forth in the Actual Availability Report.

**3.23 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 P, 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.

**3.24 Seller’s Provision of Historic Wind Data.**

- (a) Seller shall provide to SCE a minimum of one (1) year of recorded meteorological data from the Site not later than ninety (90) days prior to Initial Synchronization.
- (b) 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:

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- (i) Wind direction;
  - (ii) Wind speed;
  - (iii) Air temperature;
  - (iv) Barometric pressure;
  - (v) Relative humidity;
  - (vi) Elevation of the station; and
  - (vii) Latitude and longitude of the station.
  - (viii) Format of Data.
- (d) Seller shall provide the data:
- (ix) In the format to be specified by SCE; and
  - (x) In the interval in which such data was recorded.

### 3.25 SA-Curtailed Amounts.

Seller shall comply with the requirements of Exhibit K and Attachment K-1 thereto. If Seller believes that an SA-Curtailment Event has occurred and wishes to make a claim for any SA-Curtailed Amounts and an SA-Curtailment Payment, Seller will comply with the provisions of Exhibit K.

### 3.26 Seller Charges.

- (a) Seller Charges During the Startup Period.
- (i) If SCE is not obligated to purchase the Product at any time during the Startup Period pursuant to Section 2.03, then Seller shall be solely entitled to and liable for (i) all Transmission Provider Charges, Transmission Provider Revenues, Transmission Service Charges, Transmission Losses and all Transmission Provider Sanctions and (ii) all Secondary Transmission Provider Charges, Secondary Transmission Provider Revenues, Secondary Transmission Service Charges, Secondary Transmission Losses and all Secondary Transmission Provider Sanctions, in each case assessed or incurred during such portion of the Startup Period.

- (ii) If SCE is obligated to purchase the Product at any time during the Startup Period pursuant to Section 2.03, then, with respect to such portion of the Startup Period:
  - (1) Transmission Provider Charges. Seller shall be liable for all assessed or incurred Seller-Side Transmission Provider Charges; and
  - (2) Transmission Provider Revenues. SCE shall have the right to retain any and all Transmission Provider Revenues and Secondary Transmission Provider Revenues. Seller shall forward to SCE any Transmission Provider Revenues and Secondary Transmission Provider Revenues (to the extent received by Seller), net of any charges and fees for which SCE is liable in accordance with this Section 3.26 and Section 4.02.
- (iii) Regardless of whether SCE is obligated to purchase the Product, Seller shall be liable for the following charges assessed or incurred during the Startup Period:
  - (1) Transmission Provider Sanctions. Any Seller-Side Transmission Provider Sanctions; and
  - (2) Ancillary Service Charges and Wind Integration Charges. Any
    - (i) Ancillary Service Charges and Wind Integration Charges and
    - (ii) Secondary Ancillary Service Charges and Secondary Wind Integration Charges.
- (iv) Also regardless of whether SCE is obligated to purchase the Product, Seller shall not be liable for any SCE Penalties during the Startup Period; provided, however, Seller must comply with the availability forecasting provisions set forth in Exhibit D during the Startup Period.
- (v) With respect to the Startup Period, in no event shall the sum of all charges for which Seller is liable, less any Transmission Provider Revenues and Secondary Transmission Provider Revenues to which Seller is entitled, for a particular period exceed the amount payable to Seller for the same period pursuant to Section 4.03, and SCE shall be liable for all such charges in excess of such amount payable to Seller.

(b) Seller Charges During the Term.

Seller shall be liable for the following charges, sanctions or penalties, or shall have the right to retain the following revenues, as applicable, assessed or incurred during the Term:

- (i) Transmission Provider Charges. Any Seller-Side Transmission Provider Charges.
- (ii) Transmission Provider Revenues. SCE shall have the right to retain any and all Transmission Provider Revenues and Secondary Transmission Provider Revenues, and Seller shall forward to SCE any Transmission Provider Revenues and Secondary Transmission Provider Revenues (to the extent received by Seller), net of any charges and fees for which SCE is liable in accordance with this Section 3.26 and Section 4.02. Alternatively, at the option of SCE, SCE shall net any Transmission Provider Revenues and Secondary Transmission Provider Revenues against amounts owed by SCE to Seller if such Transmission Provider Revenues and Secondary Transmission Provider Revenues are retained by Seller. SCE shall pay to Seller any amount the Transmission Provider pays or credits to SCE for interconnection costs paid by Seller.
- (iii) Transmission Provider Sanctions. Any Seller-Side Transmission Provider Sanctions.
- (iv) SCE Penalties. Any SCE Penalties assessed by SCE in accordance with Exhibit Q if Seller fails at any time during the Term to comply in all material respects with the availability forecasting provisions set forth in Exhibit D.

(c) Transmission Provider Charge Statement.

Seller shall comply with the following provisions from the date of Initial Synchronization until the end of the Term:

- (i) No later than fifteen (15) days after the end of each calendar month Seller shall provide a statement (the "Transmission Provider Charge Statement") to SCE showing (i) any Transmission Provider Charges, Ancillary Service Charges, Wind Integration Charges, Transmission Provider Revenues and Transmission Provider Sanctions and (ii), if applicable, any Secondary Transmission Provider Charges, Secondary Ancillary Service Charges, Secondary Wind Integration Charges, Secondary Transmission Provider Revenues and Secondary

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Transmission Provider Sanctions, in each case that are assigned by the Transmission Provider and if applicable the Secondary Transmission Provider, to the Generating Facility or for energy delivered during such prior month, together with a copy of the statement or invoice received by Seller from the Transmission Provider and, if applicable, the Secondary Transmission Provider itemizing such charges, revenues and sanctions.

- (ii) For each item listed in Section 3.26(c)(i), Seller shall indicate whether such amount is the responsibility of Seller or SCE, in accordance with the provisions of Section 3.26(a), Section 3.26(b), Section 4.02(a) and Section 4.02(b) and SCE shall pay any amounts for which it is liable pursuant to Section 4.02(d).

### 3.27 Wind Turbine Serial Defect Report.

(a) Notice.

Commencing upon Initial Operation and continuing throughout the Term, Seller shall:

- (i) Within fourteen (14) days after the occurrence of any event for which Seller believes may, but has not confirmed to, qualify as a Wind Turbine Serial Defect, Seller shall provide SCE with Notice of the occurrence of such event;
  - (ii) Within fourteen (14) days after the date upon which Seller has confirmed the occurrence of a Wind Turbine Serial Defect and Seller is in possession of all relevant documentation required to demonstrate such Wind Turbine Serial Defect hereunder, Seller shall provide SCE with Notice confirming the occurrence of a Wind Turbine Serial Defect; and
  - (iii) Within sixteen (16) days after Seller provides Notice to SCE pursuant to clause (ii) above, Seller shall provide to SCE a Wind Turbine Serial Defect Report.
- (b) Wind Turbine Serial Defect Report. SCE shall have forty five (45) days after receipt of the Wind Turbine Serial Defect Report to review such report. Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation requested by SCE, which Seller is able to obtain with commercially reasonable efforts, for SCE to audit and verify any matters in any Wind Turbine Serial Defect Report.

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- (c) Disputes. If SCE disputes the Wind Turbine Serial Defect Report, SCE shall provide Notice to Seller within forty five (45) days after receipt of the Wind Turbine Serial Defect Report and include data supporting its position.

The Parties shall negotiate in good faith to resolve any Dispute related to a Wind Turbine Serial Defect.

If the Parties are unable to resolve any such Dispute within thirty (30) days after SCE's giving Notice of such Dispute, either Party may submit the Dispute to the Technical Consultant for resolution pursuant to Section 11.04; provided however once Seller submits the initial Notice under Section 3.27(a)(i) to SCE, the respective Wind Turbine Serial Defect shall be presumed to be valid until such time that SCE disputes any such Wind Turbine Serial Defect claimed by Seller in such Notice or Wind Turbine Serial Defect Report, as the case may be, and a determination is made that no Wind Turbine Serial Defect has occurred, in accordance with Section 11.04.

In the event that the Parties are able to resolve any such Dispute and the Technical Consultant has concluded that a Wind Turbine Serial Defect has not occurred, then there shall be a retroactive adjustment to any Lost Output claimed or not claimed by Seller and, to the extent that an Event of Deficient Energy Deliveries would have occurred but for Seller's claim of a Wind Turbine Serial Defect, Seller shall pay the applicable Energy Replacement Damage Amount, pursuant to Section 3.05(b), plus any accrued interest (which interest shall be assessed at the Interest Rate and accrue from the date on which the Event of Deficient Energy Deliveries occurred in respect to such claimed Wind Turbine Serial Defect until the actual date upon which Seller pays the applicable Energy Replacement Damage Amount pursuant to this Section 3.27).

### 3.28 NERC Electric System Reliability Standards.

During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility if Seller is required to be a registered entity pursuant to the NERC Reliability Standards, Seller (or an agent of Seller as reasonably agreed to by SCE) shall register with NERC as the Generator Operator and the Generator Owner for the Generating Facility and shall perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that SCE, in its capacity as Scheduling Agent, is required to perform under this Agreement. During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility if SCE is required to be a registered entity pursuant to the NERC Reliability Standards in connection with its obligations as Scheduling Agent, SCE shall register in such capacity with NERC and shall perform any obligations thereunder related to its capacity as a Scheduling Agent.

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Notwithstanding anything to the contrary set forth in this Section 3.28, each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations (including by SCE as Scheduling Agent) may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by NERC, WECC, or the CAISO in order to comply with the NERC Reliability Standards. Each Party agrees to cooperate with the other in implementing the processes and procedures required by NERC, WECC, or the CAISO in order to comply with the NERC Reliability Standards.

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

**ARTICLE FOUR. SCE'S OBLIGATIONS**4.01 Obligation to Pay.

- (a) For Seller's *full* compensation under this Agreement, SCE shall make monthly Energy Payments to Seller (i) during the Startup Period, *provided that* Seller has met all conditions precedent as set forth in Section 2.03, and (ii) during the Term, calculated in each case in the manner described in Section 4.03, at the applicable Energy Price.

SCE may, but shall not be obligated to, purchase from Seller any Product that Seller delivers after the effective time of (i) a curtailment order of SCE delivered in accordance with Section 4.06(c)(ii) or (ii) a curtailment order delivered by the Transmission Provider in accordance with the Interconnection Agreement.

SCE shall not be obligated to purchase from Seller, or otherwise liable for, any Product that is not or cannot be delivered as a result of:

- (i) An outage of the Generating Facility;
  - (ii) A Force Majeure affecting the Generating Facility pursuant to Article Five;
  - (iii) A reduction or curtailment of electrical energy deliveries from the Generating Facility as a result of a Force Majeure affecting Transmission Provider; or
  - (iv) If the Generating Facility is capable of delivering power to the Delivery Point, but SCE can not transact and Schedule a sale or exchange of such Metered Amounts at any point of delivery (including the Delivery Point) at any price (including at a negative price requiring a payment by SCE to the third-party buyer).
- (b) Notwithstanding anything in this Section 4.01, if Seller fails to meet the conditions of Section 2.03, Seller's full compensation for electric energy delivered during the Startup Period shall be the receipt of Transmission Provider Revenues, if any, in accordance with Section 4.02.



4.02 SCE Charges.(a) SCE Charges During the Startup Period.

- (i) If SCE is not obligated to purchase the Product at any time during the Startup Period, then SCE shall neither be entitled to, nor liable for, (i) any Transmission Provider Charges, Transmission Provider Revenues, Ancillary Service Charges, Transmission Service Charges and Transmission Losses or (ii) any Secondary Transmission Provider Charges, Secondary Transmission Provider Revenues, Secondary Ancillary Service Charges, Secondary Transmission Service Charges, Secondary Transmission Losses and all Secondary Transmission Provider Sanctions, in each case assessed or incurred during such portion of the Startup Period.
- (ii) If SCE is obligated to purchase the Product at any time during the Startup Period, then SCE shall be liable for the following charges, losses or sanctions, or have the right to retain the following revenues, as applicable, assessed or incurred during such portion of the Startup Period:
  - (1) Transmission Provider Charges. Any Buyer-Side Transmission Provider Charges;
  - (2) Transmission Provider Revenues. All Transmission Provider Revenues and Secondary Transmission Provider Revenues;
  - (3) Transmission Service Charges. Any Transmission Service Charges and Secondary Transmission Service Charges;
  - (4) Transmission Losses. Any Transmission Losses and Secondary Transmission Losses; and
  - (5) Transmission Provider Sanctions. Any Buyer-Side Transmission Provider Sanctions.

(b) SCE Charges During the Term.

SCE shall be liable for the following charges, losses or sanctions assessed or incurred during the Term:

- (i) Transmission Provider Charges. Any Buyer-Side Transmission Provider Charges.

- (ii) Ancillary Service Charges. Any Ancillary Service Charges and Secondary Ancillary Service Charges.
  - (iii) Wind Integration Charges. Any Wind Integration Charges and Secondary Wind Integration Charges.
  - (iv) Transmission Service Charges. Any Transmission Service Charges and Secondary Transmission Service Charges.
  - (v) Electrical Losses. Any Electrical Losses occurring at or beyond the Delivery Point, including Transmission Losses and Secondary Transmission Losses.
  - (vi) Transmission Provider Sanctions. Any Buyer-Side Transmission Provider Sanctions.
- (c) Statements from Seller.

Upon receipt of the Transmission Provider Charge Statement sent by Seller to SCE pursuant to Section 3.26(c), SCE shall review such statement, request additional information of Seller if necessary, and include any undisputed items in the next monthly statement sent to Seller in accordance with Section 4.04.

- (d) Other Reimbursements or Payment Obligations.

Except as otherwise set forth under this Agreement, each Party shall pay all reimbursement obligations or any other payment obligations set forth in this Agreement no later than thirty (30) days after the date that the paying Party receives Notice from the non-paying Party of any such obligation to make reimbursement or payment.

#### 4.03 Energy Payments.

Monthly payments for Product delivered to SCE in accordance with the terms of this Agreement (“Energy Payments”) shall be calculated pursuant to the following formula:

$$\text{ENERGY PAYMENT} = \sum_i^n A \times B_i$$

Where:

- A = The applicable Energy Price specified in Section 1.06, in \$/kWh (i.e., \$/MWh/1000)
- B = The sum of Metered Amounts per each applicable Energy Price specified in Section 1.06 covering all hours during the period being calculated in kWh
- i = An applicable Energy Price
- n = All applicable Energy Prices

#### 4.04 Payment Statement and Payment.

- (a) Commencing upon Initial Synchronization, no later than thirty (30) days after the last Business Day of each calendar month during which:
  - (i) Seller is delivering electric energy to the Delivery Point;
  - (ii) Any charges or revenues pursuant to Section 3.26 or 4.02, are incurred or realized; 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 sum of each item for which Seller is liable pursuant to Section 3.26(a);
  - (2) The sum of each item for which Seller is liable pursuant to Section 3.26(b);
  - (3) The sum of the Metered Amounts for which the payment is being made for each month;
  - (4) The sum of the Metered Amounts associated with a Low Price Period for each month;
  - (5) The sum of any SA-Curtailed Amounts for any prior periods for which payment is being made;
  - (6) A calculation of the gross amount due to Seller; and

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- (7) A calculation of the net amount payable to 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 Charges.

In the event SCE determines that:

- (1) The Transmission Provider has recalculated any charges or revenues for electric energy produced by the Generating Facility and delivered, Scheduled or transmitted during the Startup Period; or
- (2) A calculation of Metered Amounts or any charges or revenues pursuant to Section 3.26 or 4.02, is incorrect as a result of inaccurate Revenue Meter readings, the correction of data by the Transmission Provider, or a recalculation of such charges or revenues by the Transmission Provider,

Following consultation with Seller and, if necessary, the Transmission Provider, SCE shall promptly recalculate all affected Metered Amounts, Transmission Provider Charges, Transmission Provider Sanctions or SCE Penalties for the period of the inaccuracy based upon an adjustment of inaccurate Revenue Meter readings, or correction of data or recalculation of Transmission Provider Charges or Transmission Provider Sanctions in accordance with the Transmission Provider Tariff.

SCE shall also promptly recalculate any payment affected by any meter, Transmission Provider Charge, Transmission Provider 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 the next monthly payment statement, any such additional amount still owing to SCE shall be netted against amounts owed to Seller in any subsequent monthly payments to Seller or invoiced to Seller, in which case Seller must pay the undisputed amount owing to SCE within twenty (20) days after receipt of such invoice.

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

SCE may make payment adjustments arising from a recalculation any Metered Amounts, Transmission Provider Charges, Transmission Provider Sanctions, or SCE Penalty 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 4.04(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 4.04(c) shall limit SCE's rights under applicable tariffs, other agreements or Applicable Law.

(d) Waiver.

- (i) Except as provided in Section 4.04(b) and as otherwise provided in this Section 4.04(d), if within three hundred sixty-five (365) days after receipt of SCE's payment statement, either Party does not give Notice to the other Party of an error, *then* such Party 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 three hundred sixty five (365) day period, Seller shall have an additional ninety (90) 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 either Party identifies an error in Seller's favor and the other Party 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 either Party identifies an error in SCE's favor and the other Party 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.
- (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 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 undisputed 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 such Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the mediation and arbitration as provided in Article Eleven.

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**4.05 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*, 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 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 the obligations of Seller under this Agreement have been satisfied.

**4.06 Transmission and Scheduling.**

- (a) Prior to Initial Synchronization, SCE shall take all actions necessary to become (or to cause a qualified third party to become) the Scheduling Agent from Initial Synchronization through the Term of this Agreement. In the event that a third party acts as the Scheduling Agent, SCE shall be responsible for the actions of such third party in performing the obligations of Scheduling Agent under this Agreement as if SCE were the Scheduling Agent. If SCE is unable to arrange for scheduling pursuant to this Section 4.06(a) by the Startup Deadline and Seller is otherwise fully capable of achieving Initial Operation by the Startup Deadline, the Startup Deadline shall be extended on a day-for-day basis, without liability to Seller, until such time as SCE has satisfied its obligations under this Section 4.06(a).

Seller shall use commercially reasonable efforts to support SCE in becoming Scheduling Agent.

(b) Obligation to Schedule the Metered Amounts.

The Scheduling Agent shall have the duties set forth below:

- (i) Submitting Schedules to the Transmission Provider in accordance with applicable Tariff protocols and this Agreement;
- (ii) Submitting all Notices and updates required under the applicable Transmission Provider Tariff regarding the Generating Facility's status to the Transmission Provider;
- (iii) Using the Availability Forecast submitted by Seller to the Scheduling Agent pursuant to Exhibit D, including updated Availability Forecasts to the extent reasonably practicable, forecast to the Transmission Provider (or cause a third party wind forecaster to forecast) Seller's expected generation ("Projected Energy Forecast") in any given hour;
- (iv) Submitting the adjusted Projected Energy Forecast to the Transmission Provider as Schedules; and
- (v) Fully complying with the Transmission Provider Tariff with respect to submitting Schedules to the Transmission Provider for the electric energy produced by the Generating Facility.

(c) Obligation to Procure and Redirect Transmission Service.

- (i) During the Startup Period after satisfaction of the conditions set forth in Section 2.03, and during the Term, the Scheduling Agent shall (subject to the provisions of this Section 4.06(c)):
  - (1) obtain transmission services at and from the Delivery Point to such points of delivery as designated by SCE, and
  - (2) whenever, and to the extent, the previously Scheduled points of delivery become unavailable due to Transmission Provider curtailments, redirect transmission capacity to any alternative point of delivery (including the Delivery Point) where SCE can schedule Metered Amounts and transact a sale or exchange of Metered Amounts at any price (including at a negative price requiring a payment by SCE to the third-party buyer).

Notwithstanding the preceding sentence, the Scheduling Agent shall comply with the Transmission Provider Tariff in procuring and redirecting the scheduling and transaction to any delivery point.



- (ii) Notwithstanding the provisions of Section 4.06(c)(i), SCE shall have the right from time to time to order curtailment of the Generating Facility (upon at least thirty (30) minutes Notice to Seller prior to the effective time of such curtailment) if SCE determines in its sole discretion that the cost of Metered Amounts including transmission costs to the point of resale is uneconomic to SCE; provided that such curtailment shall be included in the calculation of the SA-Curtailed Amounts.
  
- (d) Notice of Low Price Period.  
  
The Scheduling Agent shall provide Seller within forty-eight (48) hours a Notice of any claim for adjustment of the Energy Price to a Low Price, together with documentation demonstrating the transmission unavailability.
  
- (e) SA-Curtailed Amounts.  
  
Upon receipt of a Curtailment Report provided by Seller in accordance with Exhibit K, SCE shall comply with the provisions of Exhibit K, and shall pay Seller the SA-Curtailment Payment for any SA-Curtailed Amounts determined in accordance with Exhibit K.

#### 4.07 SCE's Obligations Pertaining to Independent Performance Engineer.

SCE shall:

- (a) Select and contract for the service of the Independent Performance Engineer, who shall develop the Generating Facility Performance Model in accordance with Exhibit O, at its sole cost and expense;
- (b) Review and approve the design criteria for the development of the Generating Facility Power Curve;
- (c) Review and approve the design criteria for the development of the Generating Facility Performance Model;
- (d) Provide Metered Amounts data for the first, second, third and fourth Term Years in accordance with this Agreement;
- (e) Review and approve the Generating Facility Performance Model;
- (f) Cause the Independent Performance Engineer to (i) promptly provide Seller with copies of all models or reports for the Generating Facility developed or produced by the Independent Performance Engineer for the Generating

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Facility, including the Generating Facility Performance Model, the form of Generating Facility Performance Model Report and the Generating Facility Power Curve, and (ii) take into account reasonable comments of Seller and its advisers with regard to all such models and reports; and

- (g) Provide Seller with a ninety (90) day period after Seller's receipt of the materials set forth in the foregoing clauses, to review and approve all items set forth in Sections 4.07(b), (c), (e) and (f) above.

If Seller has a Dispute with the Independent Performance Engineer or SCE with respect to the Generating Facility Performance Model or form of Generating Facility Performance Model Report or Generating Facility Power Curve, such Dispute shall first be submitted for resolution to senior management of the Parties for resolution. If such senior management is unable to resolve the Dispute within sixty (60) days, then the Dispute shall be submitted to a third-party independent engineer/Technical Consultant mutually selected and paid for by the Parties for resolution. Should any of the Generating Facility Performance Model, the form of Generating Facility Performance Model Report or the Generating Facility Power Curve be the subject of a Dispute, the relevant model or report shall not be implemented for purposes of this Agreement until such Dispute has been resolved.

#### 4.08 SCE's Annual Energy Price Selection.

For the period extending from the Initial Operation Date until the end of the calendar year in which Initial Operation is achieved, SCE shall have the right to select any one (1) of the three (3) Energy Price options set forth in Exhibit T-1 or T-3, as applicable, by Notice to Seller by the earlier of (i) the date twenty (20) days prior to the Initial Operation Date and (ii) the Forecasted Initial Operation Date. For such period, the applicable number of Low Price Limitation hours selected by SCE shall be multiplied by the ratio of the number of days remaining in such calendar year over 365. If SCE does not provide Notice to Seller of its selection of a Low Price Period Energy Price for such partial calendar year, SCE shall be deemed to have selected the Energy Price with zero (0) hours of Low Price Limitations.

For each calendar year starting with the first full calendar year of the Term (and for the period from the last day of the last full calendar year of the Term until the end of the Term), SCE shall have the right to annually select any one (1) of the three (3) Energy Price options set forth in Exhibit T-1 or T-3, as applicable, by providing to Seller a Notice of such selection no later than sixty (60) calendar days prior to the expiration of the preceding calendar year. If SCE fails to provide such Notice to Seller by sixty (60) calendar days prior to the expiration of the preceding calendar year, then SCE's Energy Price selection effective during such preceding calendar year shall apply to the following calendar year. For the period extending from the last day of the last full calendar year until the end of the Term, the applicable number of Low

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Price Limitation hours selected by SCE shall be multiplied by the ratio of the number of days remaining in such period over 365.

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

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**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 the obligations to pay money) when and to the extent failure of performance is caused by Force Majeure.

**5.02 Requirements Applicable to the Claiming Party.**

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

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

- (a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence (except as provided in Section 5.02(c));
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement (except as provided in Section 5.02(c));
- (c) In the event of a claim of Force Majeure due in whole or in part to a Wind Turbine Serial Defect and in lieu of compliance with clauses (a) and (b), the Claiming Party must provide Notice to SCE as well as a Wind Turbine Serial Defect Report for the claimed Wind Turbine Serial Defect in accordance with those provisions set forth in Section 3.27(a); and
- (d) 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 for the Claiming Party, using commercially reasonable and diligent efforts, to remedy its inability to perform as a result of the Force Majeure.

This Section 5.02 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.

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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 Initial Operation Deadline and Startup Deadline Extensions.

If a Force Majeure occurs prior to the Initial Operation Deadline which prevents Seller from achieving the Initial Operation Deadline, *then* the Initial Operation Deadline shall, subject to Section 2.04(b) 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.

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 1.03 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 Section 5.05, be extended on a day-for-day basis for the duration of the Force Majeure.

#### 5.05 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, without any liability to the other Party in the event of Force Majeure which extends for more than three hundred sixty five (365) consecutive days after a Claiming Party has given a Notice that its performance is excused in whole as a result of the Force Majeure; *provided however*, that SCE's right to terminate under this Section 5.05 shall be suspended if:

- (a) The event of Force Majeure has resulted in damage to the Generating Facility;
- (b) Seller is implementing with reasonable diligence a plan for repair of the Generating Facility which reasonably will take longer than such three hundred and sixty five (365) day period;
- (c) The completion of the repair shall occur, and the claim by Seller of the Force Majeure relief shall end, no later than seven hundred thirty (730) days after

Seller has given a Notice in accordance with Section 5.02 that its performance is excused in whole as a result of such Force Majeure;

- (d) In the event that Force Majeure is claimed due to a Wind Turbine Serial Defect that results in a diminished net capacity factor or Contract Capacity, the Independent Performance Engineer shall recalibrate the Generating Facility Performance Model to accommodate such revised net capacity factor or Contract Capacity;
- (e) In the event that at the end of such seven hundred thirty (730) day period the Generating Facility shall have an operating capacity of at least eighty (80) MW (the "Restored Capacity"), then the Contract Capacity set forth in Section 1.01(e) shall be adjusted to include the Demonstrated Contract Capacity for the Restored Capacity; the Expected Annual Energy Delivery Obligation set forth in Section 1.01(f) shall be calculated using such adjusted Contract Capacity; 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 terms and conditions of this Agreement, including Section 6.01(c), shall be deemed to apply to such adjusted Contract Capacity, Expected Annual Energy Delivery Obligation, Performance Assurance Amount and Unincluded Capacity and any other applicable terms which require proportional adjustment; and
- (f) SCE's right to terminate this Agreement under this Section 5.05 shall be reinstated at the end of such seven hundred thirty day period if Seller has not achieved a Restored Capacity of at least eighty (80) MW.

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\*\*\* 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) Events of Default with Respect to Either Party.

With respect to either Party:

- (i) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if:
  - (1) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
  - (2) Such inaccuracy is not capable of a cure, but the non-breaching Party’s damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within ten (10) 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 or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure (or such shorter period as may be specified below), which Notice sets forth in reasonable detail the nature of the failure; *provided that*, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;
- (iii) A Party fails to make when due any payment required under this Agreement (other than payments 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) The failure of such Party to satisfy the credit worthiness and collateral requirements in Article Eight and such failure is not cured within five (5) Business Days after Notice of such failure, unless otherwise specified in Section 8.02(b);
  - (v) A Party becomes Bankrupt; or
  - (vi) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (b) Events of Default with Respect to Seller's Guarantor.

With respect to Seller's Guarantor (each event listed below to be (1) deemed an Event of Default with respect to Seller, (2) excused to the extent of a Force Majeure, and (3) cured if the Guarantor is replaced by another Guarantor or Performance Assurance in accordance with the terms 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 representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
- (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure is not remedied within five (5) Business Days after Notice;
- (iii) A Guarantor becomes Bankrupt;
- (iv) The failure of a Guarantor's Guaranty Agreement to SCE to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and such failure is not remedied within five (5) Business Days after Notice;
- (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE and such failure shall not be remedied within five (5) Business Days after Notice;

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- (vi) 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 of a Guarantor for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable and such failure is not remedied within five (5) Business Days after Notice; or
  - (vii) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, owed by a Guarantor in an aggregate amount of not less than the applicable Cross Default Amount and such failure is not remedied within five (5) Business Days after Notice;
- (c) Events of Default with Respect to Seller.

With respect to Seller (except to the extent excused by a Force Majeure):

- (i) Seller fails to post and maintain the Development Security pursuant to Section 3.04(a) and such failure is not cured within five (5) Business Days after Notice of such failure;
- (ii) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07;
- (iii) Seller has not cured a failure with respect to Section 3.07(a) within the earlier of thirty (30) days after providing Notice in accordance with Section 3.07(b) or sixty (60) days after the occurrence of the event which results in such failure;
- (iv) The sum of Qualified Amounts plus Lost Output and SA-Curtailed Amounts, if any, 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(f), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure, including lack of wind;
- (v) Except as provided in Section 2.08 or 3.04, 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;

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- (vi) Seller removes from the Site equipment upon which the Contract Capacity has been based, and such equipment (other than equipment removed for the purposes of replacement, refurbishment, repair or maintenance) is not returned within five (5) Business Days after Notice from SCE;
- (vii) The Generating Facility consists of an ERR type different than that specified in Section 1.01(d);
- (viii) Subject to the limitations in Section 3.01(d) and Section 3.19, the Generating Facility fails to qualify as an ERR;
- (ix) Subject to the limitations in Section 3.01(d) and 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 RPS Legislation;
- (x) Seller fails to achieve Initial Operation by the Startup Deadline (as extended in accordance with the terms of this Agreement); *provided*, that if Seller has complied with all of its obligations necessary to achieve Initial Operation by the Startup Deadline, and the sole reason for Seller's failure to achieve Initial Operation by the Startup Deadline is due to SCE's failure to meet its obligations under Section 2.04 or 4.06(a), then such failure by Seller shall not be deemed an Event of Default;
- (xi) Seller fails to comply with Section 2.02(b), and a Notice of termination is provided within thirty (30) days after the Interconnection Agreement Due Date;
- (xii) A termination of, or cessation of service under any agreement, other than a termination or cessation of service that is due to a breach by Buyer, necessary for:
  - (1) Interconnection of the Generating Facility to the Transmission Provider's electric system; or
  - (2) Metering of the Metered Amounts;

and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;

- (xiii) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (xiv) Subject to the limitations in Section 3.01(d) and Section 3.19, Seller fails 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;
- (xv) The occurrence of an event of default under one or more agreements or instruments, individually or collectively, relating to indebtedness of Seller or of any Portfolio Financing Entity for borrowed money, which results in such indebtedness becoming declared, by action of the lenders of such indebtedness immediately due and payable, and such condition is not be remedied within five (5) Business Days after Notice;
- (xvi) Subject to the limitations in Section 3.01(d) and Section 3.19, Seller fails to obtain CEC Certification and Verification or Permit Approval within one hundred and eighty (180) days after the Firm Operation Date.
- (xvii) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender or in connection with a Portfolio Financing Entity; or
- (xviii) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Exhibit P, if applicable.

#### 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.

The Party taking the default (the "Non-Defaulting Party") shall have the right:

- (a) To designate by Notice, a day, no earlier than ten (10) calendar days and no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) To immediately suspend performance under this Agreement; and

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- (c) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

In the event that Seller is the Non-Defaulting Party, Seller shall have no duty to mitigate its damages unless SCE has waived in writing, solely for the purpose of Seller's efforts to mitigate damages arising after such Notice of an Early Termination Date, Section 3.01(f) and every other provision of this Agreement limiting the ability of Seller to sell Product to third parties.

### 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 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 owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), *then* the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

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

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\*\*\* 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 OTHER 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 EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED SUCH EXCLUSIVE 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 10.15, 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.

THE VALUE OF ANY PRODUCTION TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS), IF ANY, SHALL BE DEEMED DIRECT DAMAGES, PROVIDED HOWEVER, IN THE EVENT THAT THE ENERGY PRICE HAS BEEN ADJUSTED PURSUANT TO SECTION 1.06(c) TO INCLUDE THE VALUE OF PRODUCTION TAX CREDITS, THE VALUE OF SUCH PRODUCTION TAX CREDITS SHALL NOT BE DEEMED DIRECT OR INDIRECT DAMAGES AND MAY NOT BE RECOVERED BY SELLER AS DIRECT OR INDIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF SECTION 10.03 (INDEMNITY) AND TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN ANY LIQUIDATED DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES (IN EACH CASE OTHER THAN THOSE COMPRISING A CLAIM BY A THIRD PARTY NOT A PARTY HERETO FOR WHICH A PARTY IS ENTITLED TO INDEMNIFICATION HEREUNDER), BY

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STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

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

THIS ARTICLE SEVEN SHALL NOT PREVENT (NOR IS IT INTENDED TO PREVENT) SCE FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTERESTS IN COLLATERAL WITH RESPECT TO SECURED OBLIGATIONS (WHICH OBLIGATIONS ARE SUBJECT TO THE TERMS OF THIS ARTICLE).

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*\*\*\* 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 generally accepted accounting principles:
- (i) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its , and in the event that (1) Seller has a Guarantor or (2) Seller or the Generating Facility is included in a Portfolio Financing, its Guarantor's and any Portfolio Financing Entity's, 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 in the event that (1) Seller has a Guarantor or (2) Seller or the Generating Facility is included in a Portfolio Financing, its Guarantor's and any Portfolio Financing Entity's 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.

In either case, the statements shall be certified in accordance with all Applicable Laws, including all applicable Securities and Exchange Commission ("SEC") rules and regulations, if such Party or its Guarantor or any Portfolio Financing Entity is an SEC reporting company; or 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 or any Portfolio Financing Entity is not an SEC reporting company;

- (b) For purposes of the requirement set forth in Section 8.01(a):
- (i) If the financial statements of a Party or a Guarantor or any Portfolio Financing Entity are publicly available electronically on the website of such Party, its Guarantor, any Portfolio Financing Entity or the SEC, then such Party shall be deemed to have met this requirement; and

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- (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 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 1.07.

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

The Performance Assurance Amount shall be either in the form of cash or Letter(s) of Credit from an issuer or issuers acceptable to SCE, *provided that*, on the commencement of the Term, if Seller has posted the Development Security in the form of cash or a Letter of Credit and SCE has not either returned the Development Security to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Security by such date, *then* 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 for all or part of the Performance Assurance Amount, Seller may provide a Guaranty Agreement or Guaranty Agreements, meeting the requirements of Section 8.02(c), from a Guarantor or Guarantors, each of which meets the requirements of Section 8.02(c) to satisfy Seller's remaining Performance Assurance obligation.

Notwithstanding any of the foregoing, in no event shall Seller concurrently provide more than two forms of Performance Assurance (i.e. two Guaranty Agreements, two Letters of Credit, one Guaranty Agreement and one Letter of Credit, or cash and either a Guaranty Agreement or Letter of Credit) without the written consent of SCE, which consent may be withheld in SCE's sole



discretion. If Seller provides two (2) forms of the Performance Assurance other than cash, each Guaranty or Letter of Credit will be a several obligation, with a capped amount as set forth in such Guaranty Agreement or Letter of Credit and shall require SCE to pursue each Guaranty Agreement or Letter of Credit for a pro rata portion on any claims on the Performance Assurance in proportion to the amount that such Guaranty Agreement or Letter of Credit bears to the total amount of Performance Assurance.

(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 one (1) Business Day after such refusal;
- (iii) Subject to Section 8.02(b)(vi), upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only Section (a) in the definition of "Letter of Credit Default" in Exhibit A applies);
- (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, in each

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case 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:

- (1) Failure to provide or maintain Performance Assurance as required under this Agreement; 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, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (vi) A Letter of Credit issuer shall be acceptable to SCE if such issuer meets the credit requirements set forth in the definition of "Letter of Credit" and any other credit criteria as is consistently and reasonably applied by SCE in good faith ("Credit Criteria"). Failure by SCE to approve or reject a Letter of Credit issuer proposed by Seller within three (3) Business Days from receiving Seller's written proposal with respect thereto shall constitute SCE's rejection of Letter of Credit issuer so proposed.

For the purposes of replacement of a Letter of Credit subject to a Letter of Credit Default, if Seller proposes one or more Letter of Credit issuers, and SCE, based on its Credit Criteria, provides Seller with a Notice rejecting or SCE is deemed to have rejected any such issuer(s) (a "Notice of Initial Rejection"), then Seller shall have one additional opportunity to submit one or more additional names of proposed Letter of Credit issuers ("Additional LOC Issuers") within three (3) Business Days from Seller's receipt of the Notice of Initial Rejection. Upon receipt of Seller's Additional LOC Issuers, SCE shall apply its Credit Criteria and respond as to the acceptability of the Additional LOC Issuers. If SCE provides Seller with a Notice

rejecting (or is deemed to have rejected) all Additional LOC Issuers (“Notice of Final Rejection”), an Event of Default will not have occurred (A) if Seller provides cash or an acceptable guaranty as alternative Performance Assurance, by the later of (1) on or before the fifth (5<sup>th</sup>) Business Day after SCE provides Notice of Initial Rejection to Seller, or (2) one (1) Business Day after SCE provides Seller with a Notice of Final Rejection or (B) if SCE receives the proceeds of a drawing under the affected Letter of Credit. The procedure set forth in the last two paragraphs of this Section 8.02(b)(vi) shall not apply to replacement of a Letter of Credit not subject to a Letter of Credit Default.

(c) Guaranty Agreement.

If Seller’s Performance Assurance obligation is satisfied, in whole or in part, by a Guaranty Agreement, such agreement shall be in the form of Exhibit I executed by a Guarantor identified in Section 1.08 or, if not identified, meeting the requirements for a Guarantor set forth immediately below. Each Guarantor shall:

- (i) Maintain a Credit Rating of at least:
  - (1) “BBB-” from S&P and “Baa3” from Moody’s, if it is rated by both S&P and Moody’s; or
  - (2) “BBB-” from S&P or “Baa3” from Moody’s if it is rated by either S&P or Moody’s but not by both; and
- (ii) Be otherwise acceptable to SCE (which approval shall not be unreasonably withheld or delayed) based upon standards consistently applied by SCE in its evaluation of potential guarantors.

If at any time a 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 Guarantor meeting the requirements of this Section 8.02(c) 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 such action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

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

#### 8.04 Subordinated Security Interests and Mortgage.

- (a) Prior to the commencement of the Term, as security for Seller's obligation to pay any Termination Payment, Seller may elect to provide the secured interests contemplated by this Section 8.04 by Notice delivered at least thirty (30) Business Days prior to the commencement of the Term. If Seller so elects, then the Performance Assurance Amount shall be the lower amount specified in Section 1.07, and Seller or SCE, as the case may be, shall execute, deliver, file and record, as appropriate, separate agreements, documents, fixture filings, financing statements or instruments (the "Security Documents") under which Seller will grant to SCE, in the form attached as Exhibit V-1 and a deed of trust or other appropriate real property security document to be mutually agreed upon by the Parties, fully perfected security interest(s) and lien(s) in the Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or Operate the Generating Facility, including all Permits (collectively the "Secured Interests").

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

The Secured Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller, subject to the conditions set forth in Section 8.05 below.

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

In addition, Seller agrees to file and expressly grants SCE the right to file or, in the case of a fixture filing record, such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by SCE to confirm and continue the validity, priority, and perfection of the Secured Interests.

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

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

Seller shall reimburse SCE for its reasonable costs associated with the discharge and release of the Secured Interests.

- (c) The Security Documents shall provide that if SCE acts to obtain title to the Generating Facility pursuant to the Secured Interests provided by Seller pursuant to Section 8.04, Seller shall take all steps necessary to transfer all permits and licenses necessary to Operate the Generating Facility to SCE, and shall diligently prosecute and cooperate in such transfers.

#### 8.05 Credit and Collateral Covenants.

- (a) In the event that Seller provides SCE with a security interest in the Secured Interests pursuant to Section 8.04, 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

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advisable to render fully valid and enforceable under all Applicable Laws the Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein.

- (b) Seller shall 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 funding of the development, construction, operation, maintenance, or refinancing of, or making of improvements to, the Generating Facility or as part of a Portfolio Financing.
- (d) Except for 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.
- (e) Seller promptly shall pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien (other than Permitted Liens) for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Generating Facility, or any part thereof or interest therein.
- (f) Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller's interest (or any part thereof) in the Site, the Generating Facility, or any part thereof or interest therein.
- (g) Seller shall not permit Seller's Debt to Equity Ratio to exceed during the Term the amount set forth in Section 1.09 determined as of the date of each new financing with Seller's Debt in excess of \$75,000,000 (and assuming the maximum committed amounts of such financing have been fully funded).
- (h) 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.
- (i) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary (other than a subsidiary owning interconnection facilities and a transmission line from the Generating Facility to the Delivery Point).
- (j) During any period during which a Seller is a Defaulting Party, Seller shall not:

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- (iii) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or
- (iv) Otherwise make any distribution or payment to any Affiliate of Seller.
- (k) Seller shall not cause or permit the Generating Facility to be included in more than one Portfolio Financing at any given time during the Term.
- (l) Seller shall not permit any Portfolio Financing during the Term to have a Portfolio Debt to Equity Ratio in excess of 90/10 determined on the date of initial funding of such Portfolio Financing (and assuming the maximum committed amounts of such Portfolio Financing have been fully funded).

#### 8.06 Waivers.

(a) 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 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

(b) Other.

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

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

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

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

**9.02 Governmental Charges.**

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the 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 withhold, 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.

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



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

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

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, and all Permits in the case of Seller, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement by the time that such obligations arise;
- (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;
- (h) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement;

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- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement; and
- (j) It shall act in good faith in its performance under this Agreement.

#### 10.02 Additional Seller Representations, Warranties and Covenants.

- (a) Seller hereby represents, warrants and covenants to SCE that during the Startup Period (after SCE is obligated to purchase Metered Amounts) and 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 holds 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 maintain and remain in compliance in all material respects with all material Permits; and
  - (v) Subject to Section 3.01(d) and Section 3.19, seller shall maintain CEC Certification and Verification and 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.
- (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) In making its representations and warranties under Section 10.2(b), Seller is making them subject to, and in reliance on, Section 3.01(d) and Section 3.19, and the term “commercially reasonable efforts” as used in Section 10.02(b) shall have the meaning set forth in Section 3.19.

### 10.03 Indemnity.

- (a) To the extent permitted by law and except as expressly provided herein, Seller shall release, indemnify and hold harmless SCE, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “SCE Group”) against and from any and all losses, fines, penalties, claims (including claims for indemnification under other contracts), demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney’s fees, both at trial and on appeal, whether or not suit is brought) (collectively, “Liabilities”) for or on account of (i) any injury, bodily or otherwise, to, or death of, or (ii) any damage to, or destruction or economic loss of property of, any person or entity within the SCE Group or any third party other than the Seller Group to the extent resulting from, or arising out of, or in any way connected with, any breach of warranty, representation or covenant by Seller under this Agreement or any violation of any Applicable Laws or negligent or tortious acts or omissions by any member of the Seller Group, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the SCE Group.
- (b) To the extent permitted by law and except as expressly provided herein, SCE shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Group”) against and from any and all Liabilities for or on account of (i) any injury, bodily or otherwise, to, or death of, or (ii) any damage to, or destruction or economic loss of property of, any person or entity within the Seller Group or any third party other than the SCE Group to the extent resulting from, or arising out of, or in any way connected with, any breach of warranty, representation or covenant by SCE under this Agreement or any violation of any Applicable Laws or negligent or tortious acts or omissions by any member of the SCE Group, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Group.
- (c) Without limiting Section 10.03(a) or (b) above, Seller shall release, indemnify and hold harmless the SCE Group from and against all Liabilities related to

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electric energy from the Generating Facility prior to its delivery by Seller at the Delivery Point, and SCE shall release, indemnify and hold harmless the Seller Group from and against all Liabilities related to electric energy from the Generating Facility once sold and delivered to and received by SCE at the Delivery Point, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the SCE Group or the Seller Group, respectively, seeking indemnification hereunder.

- (d) Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party hereto. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of SCE's facilities or any portion thereof to Seller or to the public, nor affect the status of SCE as an independent public utility corporation or Seller as an independent individual or entity.
- (e) 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.
- (f) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.10, Seller shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.10; provided that the insurance coverages required to be maintained by a Party pursuant to the terms hereof (if any) shall not be deemed a limitation on liability of such Party under this Agreement.
- (g) The inclusion of this Section 10.03 is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.10.
- (h) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

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- (i) 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 Section 3.01.
- (j) Seller is solely responsible for any NERC Standards Non-Compliance Penalties to the extent arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations, in accordance with Section 3.28, and will indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs, reasonable attorneys fees (which shall include costs of in-house counsel) or expenses incurred by SCE to the extent 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. SCE is solely responsible for any NERC Standards Non-Compliance Penalties to the extent arising from or relating to SCE's failure to perform its obligations as Scheduling Agent under this Agreement and SCE will indemnify, defend and hold Seller harmless from and against all liabilities, damages, claims, losses, costs, reasonable attorneys fees (which shall include costs of in-house counsel) or expenses incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent arising from or relating to SCE's failure to perform its obligations as Scheduling Agent.
- (k) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

#### 10.04 Assignment.

- (a) Except as provided in Sections 10.04 and 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) A change in direct majority ownership in Seller or in any person directly owning a majority interest in Seller (whether by transfer or by admission of a new member (but excluding (i) transfers described in Section 10.04(c) below, or (ii) a transfer to or admission of a member when such member is a passive investor (such as a Tax Equity Provider) in Seller or a member in Seller without day to day management rights (which shall be retained by one or more members existing prior to the transfer to or admission of such passive investor)) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld, conditioned or delayed and shall be given if the transferee:
  - (i) Has a minimum net worth of the greater of (i) \$90,000,000, or (ii) \$1,000,000 for each MW of Contract Capacity; and

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- (ii) Has a Credit Rating of not less than BBB by S&P or Baa2 by Moody's; and
  - (iii) Demonstrates that it has or its affiliates have experience in the operation of wind energy facilities of larger than 10 MW, or through a contract entered into by Seller or such transferee or Seller have contracted, with a party possessing such experience, for the operation and maintenance of the Generating Facility for a period of no less than three years; and
- (c) Any change in the equity percentages in Seller by persons already holding equity interests in Seller (or in members of Seller) as of the Effective Date or in a person which is a permitted transferee after the Effective Date shall not be deemed an assignment requiring consent of SCE.

#### 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 or in connection with any Portfolio Financing.

In connection with any financing or refinancing of the Generating Facility by Seller or any Portfolio Financing, SCE, Seller and Lender shall execute and deliver a Collateral Assignment Agreement substantially in the form of Exhibit W.

#### 10.06 Governing Law.

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

#### 10.07 Notices.

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

Notices (other than Forecasting, scheduling requests and curtailment orders in accordance with Section 4.06(c)(ii)) 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 pursuant to Section

4.06(c)(ii) shall be made in accordance with accepted industry practices for such notices.

Notice provided in accordance with this Section 10.07 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; and
- (c) Notice by first class United States mail shall be deemed given two (2) Business Days after the postmarked date.

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

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

All notices, requests, statements or payments for this Generating Facility must reference the RAP ID.

#### 10.08 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter, and supersedes all prior or contemporaneous oral or written communications or agreements of 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 expressly 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).

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- (e) Except as otherwise provided in Sections 4.04(b)(ii), 4.04(d)(i), the penultimate paragraph of Section 11.03, and Sections 2 and 6 of Exhibit K, waiver by a Party of any default by the other Party or any provision of this Agreement shall be in writing. One or more waivers of any provision of this Agreement by a Party shall not be construed as a waiver of a subsequent breach or requirement of the same provision or any other provision, and the consent by a Party to or approval by such Party of any act or omission by the other Party under this Agreement shall not be deemed to waive or render unnecessary the first-mentioned Party's consent to or approval of any subsequent act or omission (whether similar or dissimilar) by the other Party hereunder.
- (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 and inure to the benefit of each Party's successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between Seller and any third party 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

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Benefits and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of the RPS Legislation or other Applicable Law with respect to WREGIS, Renewable Energy Credits or any Bundled Attributes.

- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that SCE and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (p) This Agreement may be executed in one or more identical 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. Pages including signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be pages including their original signatures for all purposes.

#### 10.09 Confidentiality.

- (a) Terms and Conditions of this Agreement.

Neither Party shall disclose Confidential Information to a third party, other than (and in each case, the receiving person has a need to know such information, and has agreed to keep such terms confidential or is subject to a legal requirement to maintain confidentiality or, with respect to a Government Authority or Transmission Provider, the receiving Party has made reasonable efforts to obtain confidentiality protection, as specified below):

- (i) To such Party’s employees, counsel, accountants, advisors or investors;
- (ii) To actual or potential Lenders, or to SCE’s actual or potential lenders;
- (iii) To SCE’s Procurement Review Group, as defined in CPUC Decision 02-08-071;
- (iv) To the CPUC under seal for purposes of review subject to the disclosing Party (“Disclosing Party”) making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of

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- the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
- (v) To a party that 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 order issued by a court or entity with competent jurisdiction over the Disclosing Party, other than to those entities set forth in Section 10.10(a)(vii);
  - (vii) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, FERC, 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, 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, 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 credit ratings agencies for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's 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

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- (2) Prevent or limit such disclosure.

After providing such Notice and using such reasonable efforts, the Disclosing Party shall defer disclosure for an amount of time in order to permit the other Party a reasonable opportunity to contest disclosure if it so elects; provided that the Disclosing Party shall not be:

- (1) Prohibited from complying with a Disclosure Order; or
- (2) 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.

- (xiii) To the Independent Performance Engineer or the Technical Consultant; provided, the Independent Performance Engineer or the Technical Consultant shall each have executed a mutually acceptable non-disclosure agreement between it and both Parties prior to the disclosure of Confidential Information to the Independent Performance Engineer or the Technical Consultant.

(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 (or to and from the Independent Performance Engineer or the Technical Consultant) pursuant to this Agreement shall be subject to this Section 10.09 and the Non-Disclosure Agreement or to such other agreement that the Parties may 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 (including any information provided to and from the Independent Performance Engineer or Technical Consultant), 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 or ownership or Operation of the Generating Facility.

(c) Third Party Non-Disclosure Agreements.

If any Party, the Independent Performance Engineer or the Technical Consultant requests disclosure of information pursuant to the terms of this Agreement and such information is subject to confidentiality restrictions under the terms and conditions of a third party non-disclosure agreement, the disclosing Party shall not be required to disclose such confidential information unless the Party requesting disclosure agrees to the terms and conditions of such third party non-disclosure agreement; provided however, that the disclosing Party shall make commercially reasonable efforts to obtain the consent and cooperation of any such third-party for the disclosure of such confidential information and the execution of an appropriate confidential agreement regarding such confidential information with the Party requesting disclosure.

(d) 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) Contract Capacity.

- (vi) Forecasted Initial Operation Date; and
- (vii) Delivery Point.

## 10.10 Insurance

- (a) Throughout the Term, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with a combined single limit of not less than two million dollars (\$2,000,000) for each occurrence and ten million dollars (\$10,000,000) in the aggregate.

The insurance carrier or carriers shall be rated at least A- VII or higher by AM Best or BBB or higher by S&P.

- (b) Before commencement of the Term, as provided in Section 2.04, Seller shall:
  - (i) Furnish a certificate of insurance to SCE, which certificate shall (1) state the expiration date of such insurance, and (2) provide that such insurance shall not be cancelled without at least thirty (30) calendar days' prior Notice to Seller; and
  - (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

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

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

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

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

Any other insurance carried by SCE which may be applicable shall be deemed excess insurance and Seller’s required insurance primary for

all purposes despite any conflicting provisions in Seller's policy to the contrary."

- (c) Seller shall have the right to self-insure any of the coverages required by this Section 10.11:
1. To the extent permissible by applicable law, and
  2. Such self-insurance must be provided by an entity meeting the credit criteria set forth in Section 8.02(c)(i).

In the event that Seller elects to self-insure, Seller will provide SCE with a certificate of a Responsible Officer of Seller stating that provisions for substitute self-insurance as allowed hereunder are in place.

- (d) SCE agrees to report to Seller in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this Agreement.
- (e) Seller shall provide at least twenty (20) calendar days' prior Notice to SCE of cancellation of insurance required by this Section 10.10.

#### 10.11 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.

#### 10.12 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).

#### 10.13 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.

#### 10.14 Payments.

Payments to be made under this Agreement shall be made by wire transfer in immediately available funds.

#### 10.15 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 the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 2.07(b), 3.01, 3.04(g) 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 11.01. 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 11.01, 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.

#### 10.16 Seller Ownership and Control of Generating Facility.

Seller agrees, that, in accordance with FERC Order No. 697, upon request of SCE, Seller shall submit a letter of concurrence in support of any affirmative statement by

SCE that the contractual arrangement set forth in this Agreement does not transfer “ownership or control of generation capacity” from Seller to SCE as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to SCE.

#### 10.17 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 anyway 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.

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



**ARTICLE ELEVEN. MEDIATION AND ARBITRATION****11.01 Dispute Resolution.**

Other than requests for provisional relief under Section 10.15 and Disputes to be resolved under Section 11.04, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to mediation under the procedures described in Section 11.02 below, and if the matter is not resolved through mediation, *then* for final and binding arbitration under the procedures described in Section 11.03 below.

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

**11.02 Mediation.**

Either Party may initiate non-binding mediation by providing Notice to the other Party in accordance with Section 10.07 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

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

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

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

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

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

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

### 11.03 Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 10.07 of a demand for binding arbitration before three arbitrators (the "Arbitrators") at any time following the unsuccessful conclusion of the mediation provided for above. Upon the demand of either Party such Dispute shall be exclusively resolved by binding and mandatory arbitration in accordance with this Section 11.03 and the then current Commercial Arbitration Rules (the "Procedures") of the American Arbitration Association ("AAA") (regardless of limits on applicability set forth in Rule E-1 of the Procedures), as supplemented to the extent necessary to determine any procedural appeal questions by the Federal Arbitration Act (Title 9 of the United States Code). Specific provisions in this Section 11.03 shall control over contrary provisions in the Procedures.

Each Party will select one Arbitrator within thirty (30) days after Notice of the demand for arbitration. The two Arbitrators so selected shall select the third Arbitrator within sixty (60) days after the Notice of demand for arbitration. The Parties 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 third Arbitrator is not selected by the two Arbitrators appointed by the Parties as provided above, then such third Arbitrator shall be appointed by the Parties using the AAA's list of potential arbitrators under Rule E-5 of the Procedures which will meet the arbitrator qualifications set forth in this Section 11.03. The Parties will have three (3) Business Days to select the third arbitrator either by agreeing upon an arbitrator on the AAA's list or by striking proposed arbitrators as provided in Rule E-5 of the Procedures. If the Parties cannot agree on a third arbitrator, or if a Party fails timely to appoint its own arbitrator, the AAA office in Los Angeles, California shall appoint such arbitrator(s) in accordance with the Procedures, with due regard to the selection criteria set forth above and input from the Parties and other arbitrators.

To be qualified as an Arbitrator, each candidate must be experienced in disputes in the electric energy industry or a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court who has never been a director, officer or employee of either Party or its Affiliates and who is not otherwise financially affiliated with any Party or its Affiliates.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as an Arbitrator in the Dispute, although an 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.

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 Arbitrators hold 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 Arbitrators may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;

- (i) Unless the Parties agree otherwise, all direct testimony shall be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrators 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 2.07(b), 3.01, 3.04(g) or 10.10 of this Agreement.

Arbitration proceedings and related communications, and the decision of the Arbitrators shall all be considered Confidential Information subject to Section 10.10, and the Arbitrators shall make no disclosure of any Confidential Information that would not be permitted by a Party under Section 10.10.

The award rendered by the Arbitrators shall be final and binding and shall be the sole and exclusive remedy between the Parties regarding the Dispute in question; *provided*, the foregoing shall not limit a Party's right to seek provisional relief under Section 10.15. Judgment on the award entered pursuant to this Section may be entered in any court having jurisdiction.

The Arbitrators 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 Arbitrators 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.

Notwithstanding any provision in this Agreement to the contrary, if no Dispute notice has been issued within twenty-four (24) months following the occurrence of all events and the existence of all circumstances giving rise to the Dispute (regardless of the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

Nothing in Section 11.03 shall preclude, or be construed to preclude, the resort by either Party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction to preserve the status quo or avoid irreparable harm pending arbitration pursuant to Section 11.03.

11.04 Sections 3.06(e), 3.18 and 3.27 and Exhibits E and K Disputes.

If the Parties are not able to agree on:

- (a) An Energy Price (including any inputs related to the Energy Price such as the financial model described in Exhibit E), as provided under Exhibit E within thirty (30) days after the occurrence of the event giving rise to the adjustment of the Energy Price;
- (b) The installation of an additional meteorological station as provided in under Section 3.06(e);
- (c) The Generating Facility Model, the Generating Facility Power Curve or any of the applicable technical inputs in respect of the Generating Facility Model or the Generating Facility Power Curve, as provided under Section 3.18(b) within fifteen (15) days after any Dispute regarding the Generating Facility Model, Generating Facility Power Curve or any technical inputs related thereto;
- (d) The existence or extent of a Wind Turbine Serial Defect, as provided under Section 3.27 within thirty (30) days after any Dispute regarding such Wind Turbine Serial Defect; or
- (e) The amount of SA-Curtailed Amounts or a SA-Curtailment Payment, as provided under Exhibit K within thirty (30) days after any Dispute regarding such SA-Curtailed Amounts or SA-Curtailment Payment;

then either Party may upon fifteen (15) days Notice (the “Initiating Notice”) to the other Party refer the issue to Garrad Hassan and Partners Limited or another appropriate independent consultant mutually selected by the Parties (the “Technical Consultant”) for determination of the Energy Price, the Generating Facility Model, the Generating Facility Power Curve, the Wind Turbine Serial Defect, the SA-Curtailed Amounts or the SA-Curtailed Payment, as the case may be, using the criteria set forth in either Section 1.06(c)(ii), Section 3.18, 3.27, or Exhibit K as applicable. Each Party shall have the opportunity to submit a written statement and any evidence it deems relevant to the Technical Consultant within forty five (45) days of delivery of the Initiating Notice. The Technical Consultant shall evaluate any submissions from the Parties, this Agreement and such other information as it deems necessary to set the Energy Price as provided in Section 1.06(c)(ii), to determine the

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

Generating Facility Model or Generating Facility Power Curve as provided in Section 3.18, determine whether a Wind Turbine Serial Defect has occurred pursuant to Section 3.27, or determine the appropriate SA-Curtailed Amounts or SA-Curtailed Payment as provided in Exhibit K, as applicable. In the case of any Dispute regarding the Energy Price, the Technical Consultant shall render its decision within seventy five (75) days of the delivery of the Initiating Notice and such determined Energy Price shall be no higher than the applicable non-PTC Energy Price set forth in this Agreement. In the case of any Dispute regarding the Generating Facility Model, Generating Facility Power Curve, the Wind Turbine Serial Defect, SA-Curtailed Amounts or SA-Curtailed Payments, the Technical Consultant shall render its decision within sixty (60) days after the delivery of the Initiating notice. The decision of the Technical Consultant shall be binding on the Parties, and shall not be subject to appeal or review by any court, arbitration panel or other Governmental Authority; provided that a Party may seek enforcement of the Technical Consultant decision pursuant to Section 11.03.

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

RAP ID# 6334, (Goshen Phase II LLC)

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

**GOSHEN PHASE II LLC,**  
a Delaware limited liability company

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

By: Dennis P. Meany

By: Stuart R. Hemphill

Dennis P. Meany

Stuart R. Hemphill

*Secretary*

*Vice President,  
Renewable and Alternative Power*

Date: April 9, 2009

Date: 4/10/09

*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.*

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**EXHIBIT A**  
*Definitions*

The following terms shall have the following meaning for purposes of this Agreement, and all references to specific sections or exhibits shall mean sections or exhibits of this Agreement.

1. “100-Hour Energy Price” means the applicable Energy Price set forth in Exhibit T-1 under the respective column heading.
2. “200-Hour Energy Price” means the applicable Energy Price set forth in Exhibit T-1 under the respective column heading.
3. “Accepted Compliance Costs” has the meaning set forth in Section 3.19.
4. “Actual Availability Report” has the meaning set forth in Section 3.22.
5. “Actual Site Wind Data” means the Site wind speeds and other meteorological conditions that are measured and recorded by the Meteorological Equipment.
6. “Additional Capacity” has the meaning set forth in Section 2.08.
7. “Additional Delivery Point” has the meaning set forth in Section 3.03.
8. “Additional LOC Issuers” has the meaning set forth in Section 8.02(b)(vi).
9. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

10. “Agreement” has the meaning set forth in the Preamble.
11. “Ancillary Services” has the meaning set forth under the Transmission Provider Tariff; for clarity, Ancillary Services includes generator imbalance services as defined in the Transmission Provider Tariff.
12. “Ancillary Service Charges” means charges for Ancillary Services applicable to the Generating Facility and/or the power generated by the Generating Facility arising under the Transmission Provider Tariff or a Transmission Provider rate schedule; for clarity, Ancillary Service Charges includes charges for generator imbalance services as defined in the Transmission Provider Tariff.

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

13. “Annual Compliance Cap” has the meaning set forth in Section 3.19(b).
14. “Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, guidelines, 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.
15. “Arbitrators” has the meaning set forth in Article Eleven.
16. “Availability Deviation” (in MWh) means, for each hour, the (a) absolute difference between (i) the available capacity reported in the Availability Forecasts in accordance with Exhibit D and (ii) the actual available capacity of the Generating Facility plus the Generating Facility’s capacity, if any, that would have been available but for an unplanned outage, times (b) one (1) hour (i.e., the interval of time for monitoring availability forecasting requirements).
17. “Availability Forecasts” has the meaning set forth in Exhibit D.
18. “Availability Update” has the meaning set forth in Exhibit D.
19. “Availability Workbook” has the meaning set forth in Exhibit R.
20. “BP Guarantor” means BP Corporation North America Inc.
21. “Bankrupt” means with respect to any entity, such entity:
  - (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not dismissed within ninety (90) days;
  - (b) Makes an assignment or any general arrangement for the benefit of creditors;
  - (c) Otherwise becomes bankrupt or insolvent (however evidenced);
  - (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or
  - (e) Is generally unable to pay its debts as they fall due.
22. “Base Capacity” has the meaning set forth in Section 2.08.
23. “Bundled Attributes” has the meaning set forth in Section 3.01(d).

24. “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.
25. “Buyer” means Southern California Edison Company.
26. “Buyer-Side Transmission Provider Charges” means all Transmission Provider Charges and Secondary Transmission Provider Charges, in each case applicable to the electric energy delivered to Buyer at and after the Delivery Point.
27. “Buyer-Side Transmission Provider Sanctions” means all Transmission Provider Charges and Secondary Transmission Provider Sanctions, in each case applicable to the electric energy delivered to Buyer at and after the Delivery Point.
28. “CAISO” means the California Independent System Operator Corporation or successor entity.
29. “Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
30. “CEC” means the California Energy Commission.
31. “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.
32. “CFR” means the Code of Federal Regulations, as may be amended from time to time.
33. “Claiming Party” has the meaning set forth in Section 5.02.
34. “COB” means the California-Oregon Border pricing hub, located in the Northwest Power Pool Area sub-region of the Western Electric Coordinating Council.
35. “Collateral Assignment Agreement” means a Collateral Assignment Agreement substantially in the form of Exhibit W.
36. “Compliance Actions” has the meaning set forth in Section 3.19(b).

37. “Confidential Information” has the meaning set forth in Section 10.09(b)(ii).
38. “Construction Permits” means any permits that are required for Seller to have the authority to develop and construct the Generating Facility on the Site pursuant to applicable environmental rules and regulations. Construction Permits include a conditional use permit and authority to construct.
39. “Contract Capacity” means the nameplate electric energy generating capacity, set forth in Section 1.01(e), as adjusted in accordance with this Agreement, that Seller commits to install at the Site.
40. “Control Area” means the electric power system (or combination of electric power systems) having operational control over the Delivery Point.
41. “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.
42. “CPUC” means the California Public Utilities Commission.
43. “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.
44. “Credit Criteria” has the meaning set forth in Section 8.02(b)(vi)
45. “Credit Rating” means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit

- enhancement) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's, *then* "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody's, as the case may be.
46. "Cross Default Amount" means the dollar amount set forth in Section 1.08.
47. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.04.
48. "Defaulting Party" has the meaning set forth in Section 6.01.
49. "Delivery Losses" means all Electrical Losses occurring between the Revenue Meter and the Delivery Point.
50. "Delivery Point" means the location (or "locations" if Parties establish an Additional Delivery Point pursuant to Section 3.03) 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 within the Transmission Provider's Control Area, which, as of the Effective Date, shall be the Point of Interconnection to the PacifiCorp Control Area, as more fully described in Exhibit B.
51. "Delivery Term" means Term.
52. "Demonstrated Contract Capacity" has the meaning set forth in Section 3.04.
53. "Development Security" has the meaning set forth in Section 3.04.
54. "Disclosing Party" has the meaning set forth in Section 10.09.
55. "Disclosure Order" has the meaning set forth in Section 10.09.
56. "Dispute" means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement.
57. "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. Disqualified Stock shall not

- include any equity investment in Seller which has a preferred return flipping to a reversionary interest (and commonly known as a “tax equity financing”).
58. “Early Termination Date” has the meaning set forth in Section 6.02.
59. “Effective Date” has the meaning set forth in the Preamble.
60. “Electrical Losses” means all electric energy consumed by electrical equipment and conductors in the transmission of electricity between two defined points.
61. “Energy Payment” has the meaning set forth in Section 4.03(a).
62. “Energy Price” means the energy price set forth in Section 1.06.
63. “Energy Replacement Damage Amount” has the meaning set forth in Section 3.05(b).
64. “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.
65. “ERR” has the meaning set forth in Section 10.02(b).
66. “Event of Default” has the meaning set forth in Section 6.01.
67. “Event of Deficient Energy Deliveries” has the meaning set forth in Section 3.05(a)(ii).
68. “Expected Annual Net Energy Production” has the meaning as set forth in Section 1.01(f) of this Agreement.
69. “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.
70. “Federal Production Tax Credit Legislation” means validly enacted Federal legislation extending the applicability and rate of the renewable energy production tax credit (26 U.S.C. § 45) to owners of generating facilities which use wind energy to produce electric energy which are placed in service on or before December 31, 2010, or such other date as may be agreed to in a writing signed by both Parties, on terms no less favorable to owners of wind energy generating facilities than those available with respect to such facilities placed in service on or after January 1, 2008 and on or before December 31, 2009 pursuant to the law governing Production Tax Credits as in effect on the Effective Date including, but not limited to, a tax credit allowable for

- at least ten years of at least Twenty Dollars (\$20) per MWh in 2007 dollars adjusted for inflation as set forth therein.
71. “FERC” means the Federal Energy Regulatory Commission.
  72. “Final Wind Report” means the unabridged and unredacted final report concerning the electric energy producing potential of the Generating Facility prepared by an independent engineer which shall be obtained by Seller and provided to SCE.
  73. “Final Wind Report Net Capacity Factor” means the Generating Facility’s net capacity factor as identified in the conclusions section of the Final Wind Report.
  74. “Firm Operation Date” has the meaning set forth in Section 1.04.
  75. “Force Majeure” means (A) any Wind Turbine Serial Defect or (B) 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 Laws; curtailment or reduction in deliveries at the direction of a Transmission Provider as a result of a condition or situation which the Transmission Provider determines jeopardizes or may jeopardize the reliability of the Transmission Provider’s electric system or the reliability of any other systems to which the Transmission Provider’s electric system is connected or an emergency condition as defined under an Interconnection Agreement and any abnormal interconnection or system condition that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety (except as set forth below), *provided that*, the basis of such curtailment or reduction is not an event caused by Seller; during the period prior to the Initial Operation Date, wind speeds in excess of 21 miles per hour

at crane boom height for more than 4 hours in the aggregate during construction working hours which result in the inability to perform construction work at the Generating Facility; and any failure of a third-party supplier to perform its obligations that is a result of Force Majeure.

Force Majeure does not include:

- (d) The lack of wind;
- (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
  - (i) when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider is congestion arising in the ordinary course of operations of a Transmission Provider's system, including congestion caused by outages or capacity reductions for maintenance, construction or repair; or
  - (ii) curtailment as a result of SCE's or the Scheduling Agent's failure to comply with Section 4.06(c);
- (g) A change in or elimination of the RPS Legislation or other Applicable Laws with respect to WREGIS, Renewable Energy Credits or any Bundled Attributes as provided in Section 10.08(n); and
- (h) Seller's ability to sell, or SCE's ability to purchase, Product at a more advantageous price than is provided under this Agreement.

The limitations on a Force Majeure set forth above shall not limit Seller's rights (and the excuse of Seller's performance) under Sections 3.01(d) and 3.19.

Notwithstanding the foregoing definition of Force Majeure, if Seller can deliver power to the Delivery Point, and SCE can transact and Schedule a sale or exchange of Metered Amounts at any point of delivery (including the Delivery Point) at any price (including at a negative price requiring a payment by SCE to a third-party buyer) then a Force Majeure event shall not have occurred; provided however, if an event occurs that is a Force Majeure and SCE is unable to transact a sale or exchange of Metered Amounts at any point of delivery (including the Delivery Point) at any price (including at a negative price requiring a payment by SCE to a third-party buyer), then an event of Force Majeure shall be deemed to have occurred.



76. “Forecast” or “Forecasting” means the action of Seller in preparing and submitting to SCE, in accordance with Exhibit D, the Availability Forecasts.
77. “Forecasted Initial Operation Date” means the date Seller anticipates, as of the Effective Date, will be the Initial Operation Date.
78. “Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other.

If the Non-Defaulting Party’s Costs and Losses exceed its Gains, *then* the Forward Settlement Amount shall be 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.

79. “Full Online Date” means the earliest date in which all thirty-six (36) Wind Turbines are installed and Operating in parallel with the applicable Transmission Provider’s electric system.
80. “GAAP” means generally accepted accounting principles.
81. “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 Market Information, 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 Market 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.
82. “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.

- 83. “Generating Facility Capacity” means the Generating Facility’s total rated electric energy generating capacity determined by the total of the manufacturer’s nameplate ratings of all installed Wind Turbines, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to the individual Wind Turbine generators.
- 84. “Generating Facility Efficiency Guarantee” means the value that is:
  - (a) Set forth in Section 1.10; and
  - (b) Used in the calculation of Seller’s Annual Energy Delivery Obligation in Section 3.05.
- 85. “Generating Facility Performance Model” means a mutually acceptable computer program developed by the Independent Performance Engineer that calculates the Term Year Estimate of Metered Amounts as follows:

TERM YEAR ESTIMATE OF METERED AMOUNTS, in MWh

$$= \sum_{\substack{\text{First Settlement} \\ \text{Interval of the Firm} \\ \text{Operating Period Year}}}^{\substack{\text{Last Settlement} \\ \text{Interval of the Firm} \\ \text{Operating Period Year}}} \left\{ A \right\}$$

Where:

A = The estimated Metered Amount quantity:

- (i) For all Settlement Intervals that are not Lost Output Settlement Interval; and
  - (ii) Derived from the Generating Facility Power Curve by using the Actual Site Wind Data, in MWh.
- 86. “Generating Facility Performance Model Report” means a written report produced by Seller for each Term Year, based upon the results from the Generating Facility Performance Model, which includes:
    - (a) A Term Year Estimate of Metered Amounts for such Term Year;

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

- (b) A log of Wind Turbine availability during each Settlement Interval in such Term Year;
  - (c) A histogram, for informational purposes only, of:
    - i) The Metered Amounts recorded for all Term Years which have occurred;
    - ii) The Generating Facility Power Curve, updated with data for all Term Years which have occurred, and the P1, P50 and P99 wind profiles included in the Final Wind Report; and
    - iii) The Wind Turbine manufacturer's power curves for a single wind turbine and the P50 wind profile included in the Final Wind Report, and then multiplying the results by the number of Wind Turbines installed at the Generating Facility;
  - (d) A chart showing values sorted from largest to smallest of:
    - i) The Metered Amounts recorded for all Term Years which have occurred;
    - ii) The Generating Facility Power Curve and the P1, P50 and P99 wind profiles included in the Final Wind Report; and
    - iii) The Wind Turbine manufacturer's power curves for a single wind turbine and the P50 wind profiles included in the Final Wind Report, and then multiplying the results by the number of Wind Turbines installed at the Generating Facility;
  - (e) A histogram based upon the:
    - i) Actual site wind speeds for all Term Years which have occurred; and
    - ii) Wind speeds used in the P1, P50 and P99 wind profiles included in the Final Wind Report; and
  - (f) An electronic copy of the Generating Facility Performance Model computer program used to produce the report.
87. "Generating Facility Power Curve" means a table, chart or mathematical algorithm, developed by the Independent Performance Engineer in accordance with this Agreement, which is:
- (a) Designed to translate Actual Site Wind Data to Metered Amounts;

- (b) Capable of being integrated into the Generating Facility Performance Model; and
  - (c) Derived from the corresponding Actual Site Wind Data and Metered Amounts recorded during all Settlement Intervals:
    - (i) When all of the Wind Turbines are available to produce electric energy;
    - (ii) That are not Lost Output Settlement Intervals; and
    - (iii) That occurred during the first, second, third and fourth Term Years.
88. “Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor each generating unit.
89. “Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.
90. “Generator Imbalance Services” has the meaning set forth under the Transmission Provider Tariff.
91. “Generator Operator” means the entity that operates generating unit(s), performs the functions of supplying energy and interconnected operations services, and registers with the NERC as a Generator Operator as required by the NERC “Statement of Compliance Registry Criteria (Version 5.0)”, which is, as of the Effective Date, available at <http://www.nerc.com>.
92. “Generator Operator Obligations” means the obligations of a Generator Operator as set forth in the all applicable NERC Reliability Standards available at <http://www.nerc.com>.
93. “Generator Owner” means an entity that owns generating units and registers with NERC as a Generator Owner as required by the NERC “Statement of Compliance Registry Criteria (Version 5.0)”, which is, as of the Effective Date, available at <http://www.nerc.com>.
94. “Generator Owner Obligations” means the obligations of a Generator Owner as set forth in the all applicable NERC Reliability Standards available at <http://www.nerc.com>.
95. “Goshen Substation” means the Transmission Provider's electric substation, which also includes facilities for Idaho Power Corporation and Bonneville Power Administration, located at 788N 900E, Shelley, Idaho 83274.

96. “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.
97. “Governmental Charges” has the meaning as set forth in Section 9.02.
98. “GPII LGIA” means the Interconnection Agreement entered into on October 11, 2006 by and between Wolverine Creek Goshen Interconnection LLC and PacifiCorp.
99. “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 emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
  - (2) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1</sup>
  - (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

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

100. "Grid" means the system of transmission lines and associated facilities that comprise a Transmission Provider's electric transmission system; provided, however, that the "Grid" excludes the Interconnection Facilities designated by a Transmission Provider as an Interconnection Customer's Interconnection Facilities."
101. "Guarantor" has the meaning set forth in Section 1.08(a).
102. "Guaranty Agreement" means, if a Guarantor has been identified, the guaranty agreement from such Guarantor in the form attached hereto as Exhibit I.

103. “Independent Performance Engineer” means either (i) DNV Global Energy Concepts Inc., or (ii) any other recognized third party expert, which shall be approved, paid for and contracted by SCE, and consented to by Seller, in its reasonable discretion, that is experienced with the:
- (a) Performance characteristics of wind powered electric energy generators that will be installed at the Generating Facility;
  - (b) Design and construction of wind powered generating facilities;
  - (c) Specification of meteorological instruments;
  - (d) Development of wind generating facility power curves; and
  - (e) Development of wind generating facility performance models.
104. “Initial Operation” has the meaning set forth in Section 2.04(b).
105. “Initial Operation Date” means the earliest date on which all of the conditions set forth in Section 2.04(b) have occurred.
106. “Initial Operation Deadline” has the meaning set forth in Section 2.04(b).
107. “Initial Synchronization” means the date upon which at least one Wind Turbine is initially synchronized with the Transmission Provider’s Grid.
108. “Interconnection Agreement” means the GPII LGIA or any other FERC-accepted large generator interconnection agreement for the Generating Facility among Seller or an Affiliate of Seller and a Transmission Provider.
109. “Interconnection Agreement Due Date” has the meaning set forth in Section 2.02(b).
110. “Interconnection Certificate” means a certificate in the form and substance of Exhibit Y.
111. “Interconnection Customer” has the meaning set forth in the Interconnection Agreement
112. “Interconnection Facilities” has the meaning set forth in the Interconnection Agreement.
113. “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” on such day (or, if more than one

rate is published on such day on the most recent preceding day on which published, the arithmetic mean of such rates) as of the date payment is due (or, if the rate is not published on such day, then the rate published on the most recent preceding day); plus

- (b) Two percentage points (2%);

*provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

114. “JAMS” has the meaning set forth in Article Eleven.
115. “Key Variable Terms” means the Contract Capacity; equipment specified in this Agreement that is subject to change based upon Seller’s election; deadlines in this Agreement for which specific dates have been identified, including the Effective Date, the Forecasted Initial Operation Date, the Startup Deadline, and the Milestone Schedule, as reasonably determined by Seller.
116. “kW” means a kilowatt of electric generating capacity.
117. “kWh” means a kilowatt-hour of electric energy.
118. “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.
119. “Lender” means 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 or in connection with a Portfolio Financing.
120. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Exhibit N. All Letter of Credit costs shall be borne by Seller.
121. “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:
- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s;



- (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
- (e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates;  
or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

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

122. “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.
123. “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 Market Information, 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 Market 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.

124. “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 but was not delivered due to:

- (a) Force Majeure, *provided that*, a Wind Turbine Serial Defect event of Force Majeure shall be considered as Lost Output only from the date claimed as an event of Force Majeure by Seller in its initial Notice of Wind Turbine Serial Defect submitted to SCE pursuant to Section 3.27(a)(i) to support such proposed event of Force Majeure, through the earliest of:
    - (i) The date that the manufacturer of the affected Wind Turbines has cured the Wind Turbine Serial Defect, as evidenced by publications from the manufacturer or other evidence reasonably demonstrating that the manufacturer has cured the Wind Turbine Serial Defect;
    - (ii) The date that Seller (if Seller has developed a plan to cure such defect) has cured the Wind Turbine Serial Defect by installing replacement components, testing such components and bringing the replacement components online in respect to the affected Wind Turbines; and
    - (iii) The date that Seller reduces the net capacity factor or the Contract Capacity and recalibrates the Generating Facility Performance Model in accordance with Section 5.05(d);
  - (b) Any Transmission Provider curtailment that is not a SA-Curtailment Event.
125. “Lost Output Report” means the monthly report of Lost Output Settlement Intervals 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.
126. “Lost Output Settlement Interval” means any Settlement Interval during which there is Lost Output.
127. “Lost Output Workbook” has the meaning set forth in Exhibit M.
128. “Low Price” has the meaning set forth in Section 1.06(b)(ii).
129. “Low Price Limitations” means in the instance whereby SCE has:
  - (i) not selected either a 100-Hour Energy Price or a 200-Hour Energy Price pursuant to Section 4.08, SCE can claim zero (0) hours as a Low Price Period per the respective Term Year;
  - (ii) selected 100-Hour Energy Price pursuant to Section 4.08, SCE can claim a maximum of one hundred (100) hours per the respective Term Year as a Low Price Period; or

- (iii) selected 200-Hour Energy Price pursuant to Section 4.08, SCE can claim a maximum of two hundred (200) hours per Term Year as a Low Price Period.
130. “Low Price Period” means any period during which:
- (i) no transmission service is available from the Delivery Point to the COB or MidC for any reason prior to three (3) hours before the commencement of the respective hour for which the transmission service was sought; or
  - (ii) there is an SA-Curtailed Amount;
- whereby SCE may, at its own election and subject to the Low Price Limitations, apply the Low Price (in lieu of the otherwise applicable Energy Price) to the calculation of the Energy Payment and the SA-Curtailment Payment.
131. “Market Information” means 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, and settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX).
132. “Market Price” means, for the respective hour, the simple average (rounded to the nearest hundredth place) of the Mid-C and COB On-Peak Period index price or Off-Peak Period index price, as applicable, as reported in the following two daily publications, unless a substitute publication and/or index is mutually agreed to by the Parties: (1) Platts Megawatt Daily, and (2) the Intercontinental Exchange, Inc. Day Ahead Index (“ICE”).
133. “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).
134. “Material Permits” means all permits required for Initial Operation of the Generating Facility.
135. “Mediator” has the meaning set forth in Article Eleven.
136. “Meteorological Equipment” means the instruments and equipment that meet those specifications set forth in Exhibit S, as may be modified by SCE from time to time.
137. “Meter,” “Meters” or “Metering” means any revenue quality meter, and associated metering equipment, sufficient for monitoring and reporting in real-time, and

- recording, all electric energy produced by a generating facility. The requirements and location of Meter associated with the Generating Facility are as specified in Exhibit U.
138. “Metered Amounts” means the electric energy produced by the Generating Facility as measured by the Revenue Meter and expressed in kWh, as adjusted for Delivery Losses from the Generating Facility to the Delivery Point.
139. “Mid-C” means the Mid-Columbia pricing hub located in the Northwest Power Pool Area sub-region of the western Electric Coordinating Council.
140. “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.
141. “Moody’s” means Moody’s Investor Services, Inc.
142. “MW” means a megawatt (or 1,000 kilowatts) of electric generating capacity.
143. “MWh” means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
144. “NERC” means the North American Electric Reliability Corporation.
145. “NERC Reliability Standards” means the published electric industry reliability criteria and standards which are, as of the Effective Date, available at <http://www.nerc.com>.
146. “NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by a NERC, the 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 and Generator Owner as set forth in the NERC Reliability Standards.
147. “Non-Defaulting Party” has the meaning set forth in Section 6.02.
148. “Notice” means notices, requests, statements or payments provided in accordance with Section 10.07 and Exhibit C.
149. “Notice of Initial Rejection” has the meaning set forth in Section 8.02(b)(vi).
150. “Notice of Final Rejection” has the meaning set forth in Section 8.02(b)(vi).
151. “Non-Disclosure Agreement” has the meaning set forth in Section 10.10(b)(i) .

152. “Off-Peak Period” means the periods as identified by the daily publications referred to in the definition of “Market Price”.
153. “On-Peak Period” means the periods as identified by the daily publications referred to in the definition of “Market Price”.
154. “Operate,” “Operating” or “Operation” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
155. “Outage Schedule” has the meaning set forth in Section 3.14.
156. “P-50 Value” means the amount of energy that is expected to be generated fifty percent (50%) of the time, on the lifetime basis, as reflected in the Final Wind Report.
157. “P-95 Value” means the amount of energy that is expected to be generated ninety-five percent (95%) of the time, on an annual basis, as reflected in the Final Wind Report.
158. “Party” or “Parties” have the meaning set forth in the Preamble.
159. “Performance Assurance” means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.07) for Seller’s performance under this Agreement in the form of either cash, Letter(s) of Credit or Guaranty Agreement(s).
160. “Performance Assurance Amount” means the collateral amount for Performance Assurance set forth in Section 1.07.
161. “Performance Tolerance Band” has the meaning set forth in Exhibit Q.
162. “Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority in order to develop, construct, operate, maintain, improve, refurbish and retire the Generating Facility or to Forecast, deliver or sell the electric energy produced by the Generating Facility to SCE.
163. “Permit Approval” means approval, by the relevant regulatory agencies, of all Permits required to develop, construct and operate the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to SCE. Permit Approval with respect to any Permit shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by pendency of appeal or other opposition.

164. “Permitted Liens” means (a) any lien or security interest granted to a Lender or to SCE, (b) materialmen’s, mechanics’, workers’, repairmen’s, employees’ or other like liens of Seller arising in the ordinary course of business, or as are being contested in good faith and for the payment of which adequate reserves, bonds or other security have been provided in sufficient time to prevent the exercise of remedies on such liens or are fully covered by insurance; (c) liens for taxes not yet due and payable, or as are being contested in good faith and for the payment of which adequate reserves, bonds or other security have been provided or are fully covered by insurance; (d) liens of Seller arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good faith and for the payment of which adequate reserves, bonds or other security have been provided or are fully covered by insurance, (e) other liens of Seller incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of Seller or the value of such property or assets for the purposes of such business, and (f) involuntary liens of Seller in the aggregate sum of less than five million dollars (\$5,000,000) (including a lien of an attachment, judgment or execution) securing a charge or obligation, on any of Seller’s property, either real or personal, whether now or hereafter owned.
165. “Point of Interconnection” means the point in the Goshen Substation where the existing 17 mile 161 kV transmission line (including the metering and switch) connects to the Goshen Substation, as further described in Exhibit B of this Agreement and the GPII LGIA.
166. “Portfolio” means the single portfolio of electrical energy generating assets, including the Generating Facility, or direct interests in entities (including Seller) directly owning such generating assets, provided that (i) all such generating assets are located in the United States, (ii) the Contract Capacity represents not less than ten percent (10%) of the total installed MW capacity of the generating assets comprising the Portfolio (the “Portfolio Capacity”), and (iii) either (A) the buyers (with SCE for all purposes being treated as meeting the required credit ratings at all times) of the electrical energy of the generating facilities in the Portfolio (or providers of credit support for such buyer) with an installed MW capacity equal to ninety percent (90%) of the Portfolio Capacity (the “Credit Rating Capacity Requirement”) shall have and maintain a credit rating of at least BBB- by S&P or Baa3 by Moody’s or (B) the Portfolio Financing shall have received and maintain a credit rating of at least BBB- by S&P or Baa3 by Moody’s (which may be a private rating). If in the case of clause (iii)(A) above one or more buyers of energy from generating assets included in the Portfolio shall not meet the foregoing credit rating requirements such that the remaining buyers meeting the foregoing credit ratings (with SCE for all purposes being treated as meeting the required credit ratings at all times) shall not satisfy the Credit Rating Capacity Requirement (i.e., the aggregate MW of capacity of the

- generating facilities with such buyers (including SCE) shall be less than ninety percent (90%) of the Portfolio Capacity), then Seller shall within forty five (45) days from the date Seller first receives notice of the failure to meet the Credit Rating Capacity Requirement either (a) remove the affected generating assets from the Portfolio such that the Credit Rating Capacity Requirement shall be satisfied, and provide evidence to SCE evidencing that (x) the Portfolio Financing Entity's Debt Equity Ratio shall be no more than ninety percent (90%) immediately following the date of removal of such generating asset from the Portfolio and (y) the Portfolio has a projected average debt service coverage ratio of at least 1.3:1 or higher; or (b) provide SCE with evidence of a confirmation that the credit rating on the Portfolio Financing is at least BBB- by S&P or Baa3 by Moody's.
167. "Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by the Portfolio (i.e., the generating assets in the Portfolio or the direct interests in the entities, including Seller, directly owning such generating assets).
168. "Portfolio Financing Entity" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.
169. "Portfolio Financing Entity's Debt" means, without duplication, each of the following:
- (a) All indebtedness of Portfolio Financing Entity for borrowed money;
  - (b) All obligations of Portfolio Financing Entity 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 Portfolio Financing Entity's business);
  - (c) All obligations of Portfolio Financing Entity evidenced by notes, bonds, debentures, Disqualified Stock or other similar instruments;
  - (d) All obligations of Portfolio Financing Entity created or arising under any conditional sale or other title retention agreement with respect to property acquired by Portfolio Financing Entity (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 Portfolio Financing Entity under:
    - (i) A lease of any property (whether real, personal or mixed) by Portfolio Financing Entity as lessee that, in conformity with GAAP, is

- accounted for as a capital lease on the balance sheet of Portfolio Financing Entity;
- (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 Portfolio Financing Entity but which, upon the insolvency or bankruptcy of Portfolio Financing Entity, would be characterized as indebtedness of Portfolio Financing Entity (without regard to accounting treatment);
- (f) All obligations, contingent or otherwise, of Portfolio Financing Entity under acceptance, letter of guaranty, letter of credit or similar facilities;
- (g) All obligations of Portfolio Financing Entity with respect to any redeemable equity interests in Portfolio Financing Entity, 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 Portfolio Financing Entity 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 then-current aggregate net mark-to-market value;
- (i) All indebtedness of others referred to in clauses (a) through (h) above guaranteed by Portfolio Financing Entity, or in effect guaranteed by Portfolio Financing Entity 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 Portfolio Financing Entity.

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 (provided that the obligations in clause (h) above shall be valued at the then-current aggregate net mark-to-market value.

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

170. “Portfolio Financing Entity’s Debt Percentage” means the quotient, expressed as a percentage, equal to (a) Portfolio Financing Entity’s Debt divided by (b) Portfolio Financing Entity’s Debt plus Portfolio Financing Entity’s Equity.
171. “Portfolio Financing Entity’s Debt to Equity Ratio” means the ratio of Portfolio Financing Entity’s Debt Percentage to Portfolio Financing Entity’s Equity Percentage.
172. “Portfolio Financing Entity’s Equity” means the fair market value of the generating assets (including the Generating Facility) included as collateral for such Portfolio Financing, and taking into account this Agreement, all other power purchase agreements and future market opportunities after expiration of this Agreement or any other power purchase agreement, and all capital items associated therewith, as determined by an independent appraiser selected by Seller and subject to SCE’s consent (which shall not be unreasonably withheld, conditioned or delayed) net of the Portfolio Financing Entity’s Debt.
173. “Portfolio Financing Entity’s Equity Percentage” means the quotient, expressed as a percentage, equal to (a) Portfolio Financing Entity’s Equity divided by (b) Portfolio Financing Entity’s Debt plus Portfolio Financing Entity’s Equity.
174. “Product” means:
- (a) All Metered Amounts; and
  - (b) All Green Attributes, Capacity Attributes, and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility during the Term.

175. “Production Tax Credits” or “PTC” means production tax credits under Section 45 of the Internal Revenue Code as in effect from time-to-time during the Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind energy resources for which Seller, as the owner of the Generating Facility, is eligible.
176. “Project” means the Generating Facility.
177. “Projected Energy Forecast” has the meaning set forth in Section 4.06(b)(iii).
178. “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 does not necessarily mean the best practice, method, or standard of care, skill, safety and diligence in all cases, but is instead intended to encompass a range of acceptable practices, methods, and standards. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentences that comply with industry standards, manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, and Applicable Laws.

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

- (a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
- (c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
  - (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
179. "Qualified Amounts" means any portion of the Metered Amounts, expressed in kWh, that qualify as eligible renewable energy for purposes of the RPS Legislation or that are deemed to qualify for the same for all purposes under this Agreement by virtue of Seller's compliance with its obligations under Section 3.01(d) and Section 3.19.
180. "RAP ID" means the contract identification number set forth on the title page to this Agreement.
181. "Real-Time Availability" means Seller's cumulative available capacity of the Generating Facility on a real-time basis.
182. "Renewable Energy Credit" or "REC" has the meaning set forth in D.08-08-028, as such definition may be modified by the CPUC or Applicable Law from time to time.
183. "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.
184. "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.
185. "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 during the Term.
186. “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.
187. “Revenue Meter” has the meaning set forth in Section 3.06(a).
188. “RPS Legislation” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
189. “S&P” means the Standard & Poor’s Rating Group.
190. “SA-Curtailment Event” means an interruption or curtailment of transmission service that results in SA-Curtailed Amounts.
191. “SA-Curtailment Payment” means a payment to Seller for SA-Curtailed Amounts, calculated in accordance with the formula set forth in Item 9 of Exhibit K of this Agreement.
192. “SA-Curtailed Amounts” means the estimated energy (expressed in KWh) as determined by the Generating Facility Power Curve and the Availability Forecast for such period, as updated in accordance with Exhibit D of this Agreement, that the Generating Facility could have generated and delivered to the Delivery Point but was unable to generate and deliver other than solely and directly as a result of a curtailment of the Generating Facility due to an event or circumstance described in Section 4.01(a)(i) – (iv). A curtailment of the Generating Facility as a result of default by SCE in its capacity as Scheduling Agent or any other Event of Default of SCE permitting curtailment or suspension of performance by Seller under this Agreement shall be included in SA-Curtailed Amounts. There shall be no SA-Curtailed Amounts during any Lost Output Settlement Intervals nor at any time during the Startup Period.
193. “SCE” has the meaning set forth in the Preamble.
194. “SCE Penalty” or “SCE Penalties” has the meaning set forth in Exhibit Q.
195. “Schedule,” “Scheduled” or “Scheduling” means the action of the Scheduling Agent, in preparing and submitting transmission and interchange schedules and electric energy quantities associated with the Generation Facility to the Transmission Provider.

196. “Schedules” means the transmission and interchange schedules and expected electric energy quantities the Scheduling Agent submits to the Transmission Provider under this Agreement, pursuant to the Transmission Provider Tariff.
197. “Scheduling Agent” means SCE or any other qualified entity retained by SCE and reasonably acceptable to Seller for the purposes of undertaking the functions of preparing and submitting Schedules from the Delivery Point and associated forecasts with respect to the Generating Facility.
198. “SEC” has the meaning set forth in Section 8.01(a).
199. “Secondary Ancillary Services” has the meaning set forth under the Secondary Transmission Provider Tariff; for clarity, Secondary Ancillary Services includes generator imbalance services as defined in the Secondary Transmission Provider Tariff.
200. “Secondary Ancillary Service Charges” means charges for Secondary Ancillary Services applicable to the Generating Facility and/or the power generated by the Generating Facility arising under the Secondary Transmission Provider Tariff or a Secondary Transmission Provider rate schedule; for clarity, Secondary Ancillary Service Charges includes charges for generator imbalance charges as defined in the Secondary Transmission Provider Tariff.
201. “Secondary Generator Imbalance Charges” has the meaning set forth under the Secondary Transmission Provider Tariff.
202. “Secondary Transmission Losses” means all monetary or in-kind payments demanded by the Secondary Transmission Provider to account for Electrical Losses relating to the transmission of electric energy generated by the Generating Facility outside of the Control Area at, and beyond, the Delivery Point.
203. “Secondary Transmission Provider” means, with respect to the Generating Facility and electrical energy produced by the Generating Facility or Scheduled by the Scheduling Agent, any applicable entity or entities responsible for operating as a balancing authority for the electric power system (or combination of electric power systems) having operational control over any transmission path outside of the Control Area on which the Scheduling Agent Schedules electric energy produced by the Generating Facility.
204. “Secondary Transmission Provider Charges” means debits, costs, and interest that are directly assigned or attributable by the Second Transmission Provider to the Generating Facility and/or power generated by the Generating Facility. Notwithstanding the foregoing, Secondary Transmission Provider Charges do not include Secondary Transmission Provider Sanctions, Secondary Ancillary Service

- Charges, Secondary Wind Integration Charges, Secondary Transmission Service Charges or Transmission Losses.
205. “Secondary Transmission Provider Revenues” means any and all the credits and other payments received from the Secondary Transmission Provider, including payments made by the Secondary Transmission Provider due to positive (i.e., for a given hour, when actual generation from the Generating Facility exceeds the electric energy specified in the respective Schedules) Generation Imbalance (as defined under the applicable Secondary Transmission Provider Tariff).
206. “Secondary Transmission Provider Sanctions” means any sanction or penalty directly attributable to generation, distribution, transmission, scheduling or deliveries from or with respect to the Generating Facility under this Agreement, imposed or assessed by the Secondary Transmission Provider, including with respect to forecasting the availability of the Generating Facility or failure to adhere or respond to Secondary Transmission Provider instructions. Secondary Transmission Provider Sanctions include any charges for unauthorized increase in electrical energy delivered to the Delivery Point, any generating facility penalties and any other sanction or penalty that is not a Secondary Transmission Provider Charge, Secondary Ancillary Service Charge, Secondary Transmission Service Charge, Electrical Loss or Secondary Wind Integration Charge.
207. “Secondary Transmission Provider Tariff” means a Secondary Transmission Provider’s Open Access Transmission Tariff, including the rules, protocols, Secondary Transmission Provider Business Practices, bulletins, procedures and standards attached thereto, as well as Secondary Transmission Provider standard agreements and rate schedules, as the same may be amended or modified from time-to-time and accepted or approved by FERC.
208. “Secondary Transmission Service Charges” means debits, costs or rates arising under the Secondary Transmission Provider Tariff or a Secondary Transmission Provider rate schedule associated with procuring firm or non-firm transmission service that allows for Scheduling on the Secondary Transmission Provider’s electric system beyond the Delivery Point.
209. “Secondary Wind Integration Charges” means charges imposed by the Secondary Transmission Provider to recover costs for generation inputs needed to provide within-hour balancing for wind generators, including compensation to the Secondary Transmission Provider or SCE, as the case may be, for the hourly difference between Scheduled amounts and Metered Amounts. Secondary Wind Integration Charges shall not be duplicative of Secondary Transmission Provider Sanctions.
210. “Secured Interest” has the meaning set forth in Section 8.04(a).

211. “Security Documents” has the meaning set forth in Section 8.04(a).
212. “Security Interests” has the meaning set forth in Section 8.03.
213. “Seller” has the meaning set forth in the Preamble.
214. “Seller-Side Transmission Provider Charges” means all Transmission Provider Charges applicable to the Generating Facility and electric energy generated from the Generating Facility, in each case prior to the Delivery Point.
215. “Seller-Side Transmission Provider Sanctions” means all Transmission Provider Sanctions applicable to the Generating Facility and electric energy generated from the Generating Facility, in each case prior to the Delivery Point.
216. “Seller’s Annual Energy Delivery Obligation” has the meaning set forth in Section 3.05(a)(i).
217. “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 then-current 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 (provided that the obligation in clause (h) above shall be valued at the then-current aggregate net mark-to-market value).

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- 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).
218. “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 1.09.
219. “Seller’s Debt to Equity Ratio” means the ratio of Seller’s Debt Percentage to Seller’s Equity Percentage.
220. “Seller’s Equity” means at Seller’s election either; (i) in connection with a financing prior to the Initial Operation Date, the net equity of Seller set forth on its balance sheet prepared in accordance with GAAP and (ii) for any subsequent financing, the fair market value of the Generating Facility, and taking into account this Agreement and future market opportunities after expiration of this Agreement, and all capital items associated therewith, as determined by an independent appraiser selected by Seller and subject to SCE’s consent (which shall not be unreasonably withheld, conditioned or delayed) net of Seller’s Debt.
221. “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
222. “Settlement Amounts” means the Metered Amounts.
223. “Settlement Interval” means any one of the twenty-four (24) hour time intervals beginning on any hour and ending at the beginning of the next hour; e.g. 12:00:00 to 12:59:59 (inclusive), 1:00:00 to 1:59:59 (inclusive), etc.), or as otherwise defined by the Transmission Provider.
224. “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Generating Facility that were available at the end of such Settlement Interval, as indicated by the Actual Availability Report.
225. “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.

226. “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.
227. “Site Control” means that Seller shall:
- (a) Own the Site;
  - (b) Be the lessee of the Site under a Lease;
  - (c) Be the holder of a right-of-way grant, easement, license or similar instrument with respect to the Site; or
  - (d) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and the Generating Facility.
228. “Startup Deadline” means the date set forth in Section 1.02 by which Seller must have achieved Initial Operation as set forth in Section 1.01(c), subject to extension as provided in this Agreement.
229. “Startup Period” means the period that begins at Initial Synchronization and ends at Initial Operation.
230. “Supplemental Lost Output” has the meaning set forth in Section 3.21.
231. “Supplemental Lost Output Report” has the meaning set forth in Section 3.21.
232. “Tax Equity Provider” means any Person(s) or successor(s) in interest or assignees that provide(s) financing or refinancing for the Generating Facility to Seller (or an Affiliate of Seller) and whose return is substantially derived from tax attributes, including interest deductions, accelerated depreciation and PTCs, in respect of the ownership interest in the Generating Facility.
233. “Technical Consultant” has the meaning set forth in Section 11.04.
234. “Term” means the term of this Agreement.
235. “Term Compliance Cap” has the meaning set forth in Section 3.19(b).
236. “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.

237. “Term Year Estimate of Metered Amounts” has the meaning set forth in the definition of “Generating Facility Performance Model” in this Exhibit A.
238. “Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
239. “Transmission Losses” means all monetary or in-kind payments demanded by the Transmission Provider to account for Electrical Losses relating to the transmission of electric energy generated by the Generating Facility at, and beyond, the Delivery Point.
240. “Transmission Provider” means, with respect to the Generating Facility and electrical energy produced by the Generating Facility or Scheduled by the Scheduling Agent, any applicable entity or entities responsible for either (i) the interconnection of the Generating Facility with a Control Area at the Delivery Point, or (ii) operating as a balancing authority for the applicable Control Area.
241. “Transmission Provider Business Practices” means any Transmission Provider practice or procedure the Transmission Provider may adopt for the purpose of facilitating the administration of the Transmission Provider Tariff.
242. “Transmission Provider Charges” means debits, costs, and interest that are directly assigned or attributable by the Transmission Provider to the Generating Facility. Notwithstanding the foregoing, Transmission Provider Charges do not include Transmission Provider Sanctions, Ancillary Service Charges, Wind Integration Charges, Transmission Service Charges or Transmission Losses.
243. “Transmission Provider Revenues” means any and all the credits and other payments received from the Transmission Provider, including payments made by the Transmission Provider due to positive (i.e., for a given hour, when actual generation from the Generating Facility exceeds the electric energy specified in the respective Schedules) Generation Imbalance (as defined under the applicable Transmission Provider Tariff).
244. “Transmission Provider Sanctions” means any sanction or penalty directly attributable to generation, distribution, transmission, scheduling or deliveries from or with respect to the Generating Facility under this Agreement, imposed or assessed by the Transmission Provider, including with respect to forecasting the availability of the Generating Facility or failure to adhere or respond to Transmission Provider instructions. Transmission Provider Sanctions include any charges for unauthorized increase in electrical energy delivered to the Delivery Point, any generating facility penalties and any other sanction or penalty that is not a Transmission Provider

- Charge, Ancillary Service Charge, Transmission Service Charge, Electrical Loss or Wind Integration Charge.
245. “Transmission Provider Tariff” means a Transmission Provider’s Open Access Transmission Tariff, including the rules, protocols, Transmission Provider Business Practices, bulletins, procedures and standards attached thereto, as well as Transmission Provider standard agreements and rate schedules, as the same may be amended or modified from time-to-time and accepted or approved by FERC.
246. “Transmission Service Charges” means debits, costs or rates arising under the Transmission Provider Tariff or a Transmission Provider rate schedule associated with procuring firm or non-firm transmission service that allows for Scheduling on the Transmission Provider's electric system from and beyond the Delivery Point.
247. “Unavailable Intervals” has the meaning set forth in Section 3.06(d)(i).
248. “Unincluded Capacity” has the meaning set forth in Section 3.04(f).
249. “WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
250. “Wind Integration Charges” means charges imposed by the Transmission Provider to recover costs for generation inputs needed to provide within-hour balancing for wind generators, including compensation to the Transmission Provider or SCE, as the case may be, for the hourly difference between Scheduled amounts and Metered Amounts. Wind Integration Charges are exclusive of Transmission Provider Sanctions.
251. “Web Client” means a web-based system approved by SCE for the transmittal of Operating and availability information from the Seller to SCE as described in this Agreement.
252. “Wind Turbine” or “Wind Turbines” means the wind turbine-generators installed on the Site as part of the Generating Facility including any replacements or substitutes therefore.
253. “Wind Turbine Serial Defect” means either a defect in or failure of any component of the Wind Turbines that results in an alteration to the power curve for, or operation of, such Wind Turbines that:
- (a) Is common to at least ten percent (10%) of the Wind Turbine manufacturer’s installed base of the same wind turbine model (or any other wind turbine model that uses the same defective or failing component) in the United States

- or at least ten percent (10%) of the Wind Turbines installed at the Generating Facility;
- (b) Either affects or can be reasonably expected to affect the performance or operation of Wind Turbines installed at the Generating Facility; and
  - (c) Is either:
    - (i) Referenced by the wind turbine manufacturer in a technical bulletin issued to its customers as a preventative maintenance issue;
    - (ii) Acknowledged by the wind turbine manufacturer in a notice to its customers as a design or manufacturing defect;
    - (iii) Identified in a report from a third party expert reasonably acceptable to SCE and employed by Seller; or
    - (iv) Identified by the manufacturer or the Generating Facility O&M provider as common to at least ten percent of the turbines in the fleet or at the Generating Facility.
254. “Wind Turbine Serial Defect Report” means a Notice provided by Seller to SCE during the Term that includes:
- (a) Information from the Wind Turbine manufacturer, industry user groups, industry publications or independent experts about any wind turbine manufacturing defects associated with the Wind Turbines, to the extent that such information is available to Seller after Seller exercises commercially reasonable efforts to obtain such information;
  - (b) Seller’s analysis of any impacts a Wind Turbine Serial Defect has on Contract Capacity; and
  - (c) Seller’s plan for mitigating the effects of a Wind Turbine Serial Defect on the Operation of the Generating Facility.
255. “WREGIS” has the meaning set forth in Section 3.01(d).

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

**EXHIBIT B**

*Generating Facility and Site Description*

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

## **EXHIBIT B**

### *Generating Facility And Site Description*

Goshen Phase II Wind Farm (“Project”) is 90 MW electrical energy generation project. Exhibit B-1 shows the layout of the Project using thirty-six (36) Clipper C96 turbines having a capacity of approximately 2.5 MW each. If the Contract Capacity changes pursuant to the Agreement or if Seller uses different turbines in the Project, then this Exhibit B will be updated.

The Project is located on approximately 6,000 acres of land in Eastern Idaho near Idaho Falls, ID (see Exhibit B-1), directly north of the existing Wolverine Creek Wind Farm.

Exhibit B-1 outlines the proposed turbine locations, roads, transmission interconnection routes and the interconnection of the Generating Facility to the Delivery Point.

Exhibit B-2 is a one line diagram of the Project and the Point of Interconnection.

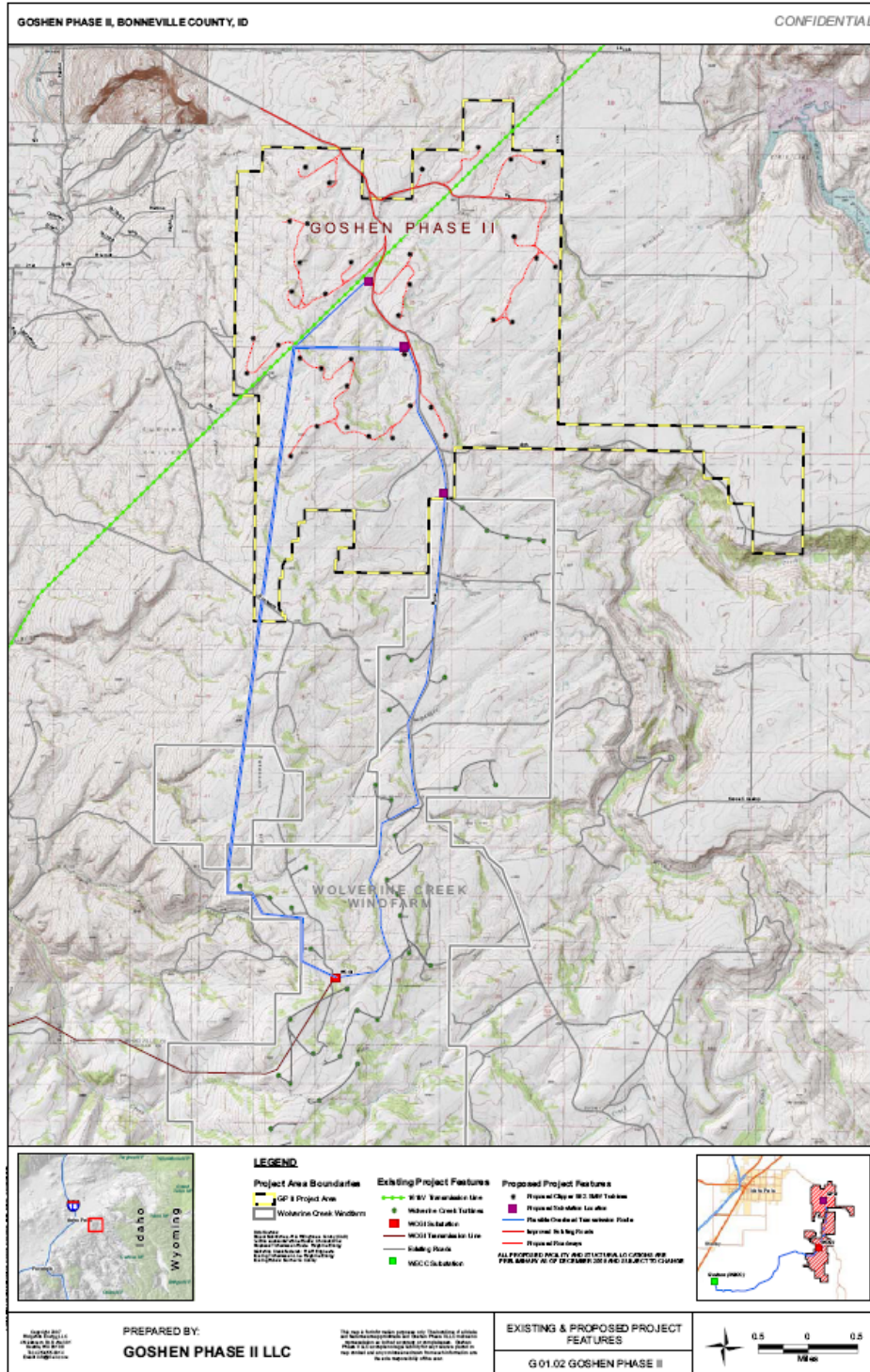
The Generating Facility will consist of (but is not limited to) wind turbine generators, foundations, step up transformers at each turbine site, collector system, substation with a transformer to step up the voltage to 161 KV, a transmission line to connect the Project to the Wolverine Creek Generation Interconnection Substation, connections to the Wolverine Creek Generation Interconnection LLC transmission line and rights to use the approximately 17 mile transmission line to the Delivery Point at the Goshen Substation.

The Project has entered into Wind Lease Agreements with a number of landowners. These Lease Agreements are for an original term of 40 years with an extended term option. In addition to these Wind Lease Agreements, the Project has also entered into Transmission and Access Easement Agreements with four landowners.

Exhibit B-3 is the legal description of the site. The Project’s Site has no specific address as the Effective Date.

Exhibits B-1, B-2 and B-3 are subject to change due to, among other reasons, final turbine selection, final engineering analysis, and Contract Capacity.

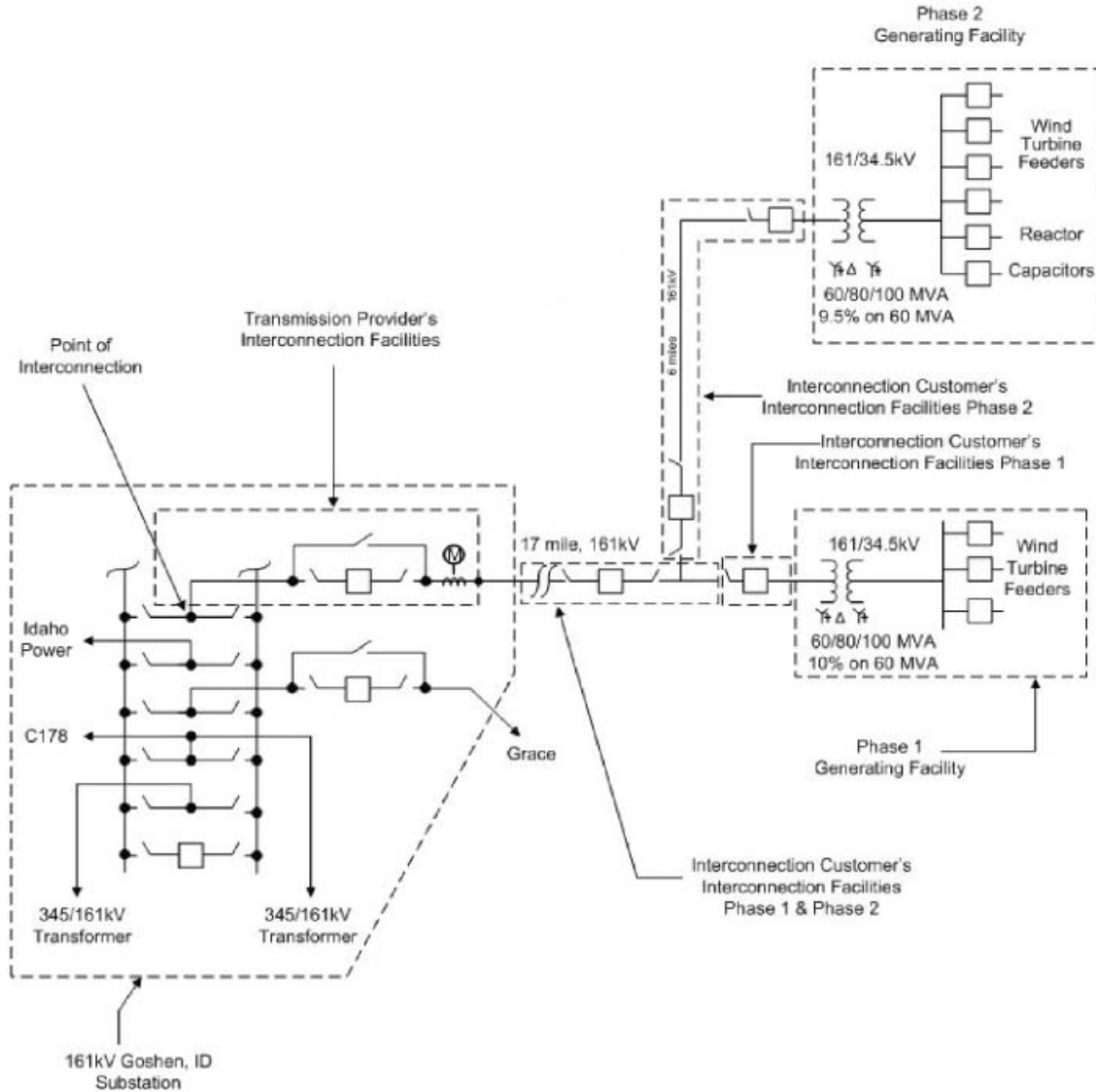
## Exhibit B-1 Project Map



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



**Exhibit B-2**  
One-Line Diagram of Project and Point of Interconnection



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

## Exhibit B-3 Legal Description of Site

### TRACT 1

Parcel A: (Jensen Land Corp)

### **Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho.**

Section 23: S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ; S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$

Section 24: S $\frac{1}{2}$  EXCEPTING THEREFROM the E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$

Section 26: NE $\frac{1}{4}$ ; NW $\frac{1}{4}$ ; ALL of the SE $\frac{1}{4}$ SW $\frac{1}{4}$  lying North and East of Bone Road: N $\frac{1}{2}$ SW $\frac{1}{4}$ , EXCEPTING THEREFROM Part of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 26 described as follows: Beginning at the SW corner of said NW $\frac{1}{4}$ SW $\frac{1}{4}$  and running thence North 250 feet more or less along the section line to the Northwesterly brow of a ridge, thence Northeasterly 1000 feet more or less along said brow extended to the Westerly side of the Bone Road; thence Easterly 800 feet more or less along said Road to the East line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ ; thence South 200 feet, more or less, along said East line to the South line of said NW $\frac{1}{4}$ SW $\frac{1}{4}$ , thence West along said South line to the point of beginning.

Section 27: NE $\frac{1}{4}$ ; SE $\frac{1}{4}$  LESS AND EXCEPTING THEREFROM the following: Beginning at the Southeast corner of said Section 27 and running thence North 1520 feet more or less along the section line to the Northwesterly brow of a ridge; thence Southwesterly 2000 feet more or less along said brow extended to the Southwest corner of the Southeast quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) of said section 27; thence east 1320 feet more or less along the section line to the point of beginning.

Section 35: SW $\frac{1}{4}$ NE $\frac{1}{4}$  lying East of the Bone Road; W $\frac{1}{2}$ SE $\frac{1}{4}$  lying East of the Bone Road; SE $\frac{1}{4}$ SE $\frac{1}{4}$  lying East of the Bone Road.

Parcel B: (Craig & Kay Jensen)

**Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho.**

Section 25: ALL EXCEPTING THEREFROM the E<sup>1</sup>/<sub>2</sub>E<sup>1</sup>/<sub>2</sub>E<sup>1</sup>/<sub>2</sub>

Section 26: SE<sup>1</sup>/<sub>4</sub>

Section 35: SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;

Section 36: ALL

TRACT 2: Steve & Tammy Rhodes and Lorene Curtis

Parcel A:

**Township 1 North, Range 39, East of Boise Meridian, Bonneville County, Idaho**

Section 2: NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>; and SW<sup>1</sup>/<sub>4</sub>; Lots 2, 3, and 4 EXCEPTING THEREFROM: NE<sup>1</sup>/<sub>4</sub> lying East of the Bone Road and LESS AND EXCEPTING THEREFROM: Road Right of Way along South boundary line of SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> as deeded in Quitclaim Deed recorded in Book 7, page 63 of deeds.

Section 3: SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>; Lots 1 and 2; SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>

EXCEPTING THEREFROM: S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>

Section 10: N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>

EXCEPTING THEREFROM: NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>

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Section 11: NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and N<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub> LESS AND EXCEPTING THEREFROM road right of way along North boundary line as deeded in Quitclaim Deed recorded in Book 7 at page 63 of deeds.

**Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 26: Part of the NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, more particularly described as follows: Beginning at the SW Corner of said NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub> and running thence North 250 feet, more or less, along the Section line to the Northwesterly brow of a ridge; thence Northeasterly 1000 feet, more or less, along said brow extended to the Westerly side of the Bone Road; thence Easterly 800 feet, more or less, along said road to the East line of said NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; thence South 200 feet, more or less, along said East line to the South line of said NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>; thence West along said South line to the point of beginning.

SE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> lying South and West of the Bone Road.

Section 27: That portion of the Southeast quarter, being more particularly described as follows: Beginning at the Southeast corner of the Southeast quarter and running thence North 1520 feet, more or less, along the section line to the Northwesterly brow of a ridge; thence Southwesterly 2000 feet, more or less, along said brow extended to the Southwest corner of the Southeast quarter of the Southeast quarter; thence East 1320 feet, more or less along the section line to the point of beginning.

Section 34: E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>

Section 35: SW<sup>1</sup>/<sub>4</sub> and E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; and the SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, LESS AND EXCEPTING THEREFROM such highway rights-of-way as are now in use over and across said premises. EXCEPTING THEREFROM: That portion of SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub> and SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> lying East of the Bone Road.

NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> lying West of Bone Road

Parcel B:

**Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 26: SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>

Section 35: W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>

Section 34: SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>

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RAP ID# 6334, (Goshen Phase II LLC)

TRACT 3: A&J Matthews

**Township 1 North, Range 40 East of the Boise Meridian, Bonneville County, Idaho**

Section 4: Government Lots 3 and 4; S $\frac{1}{2}$  NW $\frac{1}{4}$ ; SW $\frac{1}{4}$

Section 5: Government Lots 1 and 2; SE $\frac{1}{4}$  NE $\frac{1}{4}$ ;

**Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho.**

Section 13: SW $\frac{1}{4}$

Section 23: NE $\frac{1}{4}$  lying North of the centerline of Jensen Road (aka 9th South)

Section 24: N $\frac{1}{2}$ ; E $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$

Section 25: E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$

**Township 2 North, Range 40 East of the Boise Meridian, Bonneville County, Idaho.**

Section 31: S $\frac{1}{2}$ S $\frac{1}{2}$

Section 32: S $\frac{1}{2}$ S $\frac{1}{2}$

Section 33: S $\frac{1}{2}$ SW $\frac{1}{4}$

TRACT 4: Nielsen Wind and Land

**Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 21: E $\frac{1}{2}$  SE $\frac{1}{4}$

Section 22: SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 27: W $\frac{1}{2}$ W $\frac{1}{2}$ ; E $\frac{1}{2}$  SW $\frac{1}{4}$ ;

Section 28: E $\frac{1}{2}$  NE $\frac{1}{4}$ ; E $\frac{1}{2}$  SE $\frac{1}{4}$ ;

Section 33: E $\frac{1}{2}$  NE $\frac{1}{4}$ ;

Section 34: W $\frac{1}{2}$ ; W $\frac{1}{2}$  NE $\frac{1}{4}$ ; NW $\frac{1}{4}$  SE $\frac{1}{4}$ ;

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**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 3: Lots 3 and 4; SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>;

Section 4: SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;

Section 9: E<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub>; EXCEPTING THEREFROM: A strip of land being that portion of the SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 9, Township 1 North, Range 39 East Boise Meridian, lying situate 40 feet right and 40 feet left of the centerline of Ammon-Ozone Road, F. A. Route No. S-6710, as surveyed and described as follows:  
Beginning at Sta. 360+56.13 of said survey which Sta. is a point on the West line of said Southeast <sup>1</sup>/<sub>4</sub> Northeast <sup>1</sup>/<sub>4</sub>, Section 9, and being 1292.62 feet West and 1635.22 feet more or less, South of the Northeast corner of said Section 9, Township 1 North, Range 39 East Boise Meridian; thence South 57° 15' 45" East a distance of 1569.29 to Sta. 376+25.42 which Sta. is a point on the East line of said SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, Section 9, and being 2484.0 feet more or less, South 0° 38' East of the Northeast corner of said Section 9, Township 1 North, Range 39 E.B.M.

TRACT 5: C&N Land Investment

**Township 2 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho:**

Section 21: SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>

Section 22: N<sup>1</sup>/<sub>2</sub>; N<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>

TRACT 6: Balsamroot, LLC

**Township 2 North, Range 39, East of Boise Meridian, Bonneville County, Idaho.**

Section 22: NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>;SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>

Section 23: W<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>

Section 27: E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>

RAP ID# 6334, (Goshen Phase II LLC)

TRACT 7: D & K Judy Farms

**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 13: S<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>;

Section 14: E<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; EXCEPTING THEREFROM: A strip of land fifty (50) feet wide extending across the SE<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 14, Township 1 North of Range 39 East of the Boise Meridian, Bonneville County, Idaho, the centerline of said strip of land being more particularly described as follows, to-wit: Beginning at a point about twenty rods East of the Southwest corner of the SE<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub>, said Section Township and Range, and running thence in a Northeasterly direction, following the general course of Badger Creek, to a point about ten rods South of the Northeast corner of the SE<sup>1</sup>/<sub>4</sub> of the SW<sup>1</sup>/<sub>4</sub>, said Section Township and Range.

ALSO EXCEPTING: One acre in the Southwest Corner of the NW<sup>1</sup>/<sub>4</sub> of the SE<sup>1</sup>/<sub>4</sub>, Section 14, Township 1 North, Range 39 E.B.M. Bonneville County, Idaho.

ALSO EXCEPTING: A strip of land being that portion of the East ½ of Section 14, Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho, lying situate 40 feet right and 40 feet left of the following described centerline of the Lincoln Bone Road F. A. Route S6723 as surveyed, Beginning at Sta. 708+31.0 of said survey, which Sta. is a point on a curve and being 1338.5 feet South and 1154.29 feet West of the Northeast corner of said East ½ of Section 14, Township 1 North, Range 39 East Boise Meridian, Bonneville County, Idaho; thence running Southwesterly along the curve; said curve having a tangent bearing South 6° 57' 31" West, a radius of 2864.79 feet and a central angle of 22° 40' 14", a distance of 1133.55 feet, to Sta. 719+64.55 which Sta. is a point of tangency; thence running South 29° 37' 45" West a distance of 382.9 feet to Sta. 723+47.45 which Sta. is a point of curvature; thence left along the curve, said curve having a radius of 3819.72 feet and a central angle of 17° 20' a distance of 1155.55 feet to Sta. 735+03.0, which Sta. is a Point of tangency; thence South 12° 17' 45" West a distance of 124.7 feet to Sta. 736+27.7, which Sta. is a point of curvature; thence left along a curve, said curve having a radius of 1432.39 feet and a central angle of 24° 33', a distance 613.75 feet to Sta. 742+41.45, which Sta. is a point of tangency; thence running South 12° 15' 15" East a distance of 367.9 feet to Sta. 746+09.35, which Sta. is a point of curvature; thence right along the curve, said curve having a radius of 2864.79 feet and a central angle 8° 16' 05", a distance of 413.4 feet to Sta. 750+22.75, which Sta. is a point on curve and being 2023 feet, more or less, West along

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the section line from the Southeast corner of said East ½ of Section 14, Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho.

ALSO EXCEPTING: That portion of the N½ SE¼ and the S½ of the NE¼ of said Section 14 and lying East of the Bone Road; and that portion of the SW¼ SE¼ of said Section 14 lying East of the Bone Road and North of the County Road to Kepps Crossing.

Section 23: SE¼ NW¼; NE¼; NW¼ SE¼; EXCEPTING THEREFROM: Beginning at the Southwest Corner of the Northeast Quarter of Section 23, Township 1 North, Range 39 East, Boise Meridian and running thence in a Northeasterly direction to a point about 30 rods East of the Northwest Corner of the Northeast Quarter of said Section 23, the said land to be a strip fifty feet wide and the same to follow the meanderings of what is commonly known as Badger Creek.

Section 24: NW¼; W½ NE¼.

TRACT 8:

Parcel A: S & S Farms

**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 13: SW¼ NE¼; S½ NW¼; N½ SW¼; NW¼ SE¼; S½ SE¼;

Section 14: That portion of the N½ SE¼ and the S½ of the NE¼ of said Section 14 and lying East of the Bone Road; and that portion of the SW¼ SE¼ of said Section 14 lying East of the Bone Road and North of the County Road to Kepps Crossing. LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY: Part of the Southeast Quarter of the Northeast Quarter (SE¼NE¼) of Section 14, Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho described as follows:

Beginning at a point that is North 00°06'04" West 847.76 feet along the section line and South 89°53'56" West 653.31 feet from the East Quarter corner of said Section 14 and running thence South 89°43'38" West 565.97 feet to the easterly right-of-way line the following two (2) courses: (1) North 15°38'57" East 232.40 feet; thence North 07°56'39" East 199.21 feet; thence North 89°43'38" East 475.00 feet; thence South 00°06'04" East 420.65 feet to the point of beginning.

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Section 24: E $\frac{1}{2}$  NE $\frac{1}{4}$ ;

Section 34: SE $\frac{1}{4}$  NE $\frac{1}{4}$ ; E $\frac{1}{2}$  SW $\frac{1}{4}$ ; SE $\frac{1}{4}$ ; LESS AND EXCEPTING THE FOLLOWING DESCRIBED PROPERTY: Part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 34, Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho described as follows:

Beginning at a point that is North 00°20'03" West 1008.56 feet along the section line and South 89°58'55" West 721.50 feet from the East Quarter corner of said Section 34 and running thence South 06°32'09" West 213.03 feet; thence South 89°58'55" West 228.97 feet to the centerline of an existing County Road (Trail Hollow Road); thence along said center the following three (3) courses; (1) North 04°24'17" East 86.41 feet; thence (2) North 07°20'45" East 113.18 feet; thence (3) North 08°56'44" East 13.40 feet; thence North 89°58'55" East 230.02 feet to the point of beginning. LESS County Road right-of-way for Trail Hollow Road.

Section 35: NE $\frac{1}{4}$  NW $\frac{1}{4}$ ; S $\frac{1}{2}$  NW $\frac{1}{4}$ ; N $\frac{1}{2}$  SW $\frac{1}{4}$ ; SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Parcel B: Wolverine Creek Goshen Interconnection

**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 34: Part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 34, Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho described as follows: Beginning at a point that is North 00°20'03" West 1008.56 feet along the section line and South 89°58'55" West 721.50 feet from the East Quarter corner of said Section 34 and running thence South 06°32'09" West 213.03 feet; thence South 89°58'55" West 228.97 feet to the centerline of an existing County Road (Trail Hollow Road); thence along said center the following three (3) courses; (1) North 04°24'17" East 86.41 feet; thence (2) North 07°20'45" East 113.18 feet; thence (3) North 08°56'44" East 13.40 feet; thence North 89°58'55" East 230.02 feet to the point of beginning. LESS County Road right-of-way for Trail Hollow Road.

Parcel C: Wolverine Creek Energy

**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Section 14: Part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 14, described as follows: Beginning at a point that is North 00°06'04" West 847.76 feet along the section line and South 89°53'56" West 653.31 feet from the East Quarter corner of said Section 14 and running thence South 89°43'38" West 565.97 feet to the easterly right-of-way line the following two

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(2) courses: (1) North 15°38'57" East 232.40 feet; thence North 07°56'39" East 199.21 feet; thence North 89°43'38" East 475.00 feet; thence South 00°06'04 East 420.65 feet to the point of beginning.

TRACT 9: Judy's Ida-Mon Ranches

**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**Section 21: S<sup>1</sup>/<sub>2</sub>; S<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub>Section 22: S<sup>1</sup>/<sub>2</sub> N<sup>1</sup>/<sub>2</sub>; N<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>;Section 23: E<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; and that part of the N<sup>1</sup>/<sub>2</sub> NW<sup>1</sup>/<sub>4</sub> lying East of Road right of way; and that part of the SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> lying East of Road right of way;Section 25: W<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>; and that part of the NW<sup>1</sup>/<sub>4</sub> lying West of the Road right of way;Section 26: N<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub>; E<sup>1</sup>/<sub>2</sub> SW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; NW<sup>1</sup>/<sub>4</sub>; S<sup>1</sup>/<sub>2</sub> NE<sup>1</sup>/<sub>4</sub>; N<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>;Section 35: NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>;

TRACT 10: Gary B. Simmons (SSR) Trust

**Township 1 North, Range 39 East of the Boise Meridian, Bonneville County, Idaho**

Those portions of the following described tracts of real property in Bonneville County, Idaho, that are either or both West of the Bone Road or North of the Kepps Crossing Road:

Section 1: SW<sup>1</sup>/<sub>4</sub> ; SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>; W<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>;

Section 2: E<sup>1</sup>/<sub>2</sub> SE<sup>1</sup>/<sub>4</sub>; EXCEPTING THEREFROM: A strip of land being that portion of the SE<sup>1</sup>/<sub>4</sub> of Section 2, Township 1 North, Range 39 East of the Boise Meridian, lying situate 40 feet right and 40 feet left of the following described centerline of the Lincoln-Bone Road F.A. Route S-6723 as surveyed. Beginning at Sta. 614+94.84 of said survey, which Sta. is a point on a curve and being 435.7 feet, more or less west along the <sup>1</sup>/<sub>4</sub> line of the Northeast corner of said SE<sup>1</sup>/<sub>4</sub> of Section 2, Township 1 North, Range 39 East of the Boise Meridian; thence running right with the curve, said curve having a tangent of South 2° 27' 18" West, a radius of 5729.58 feet and a central angle of 1° 35' 27" a distance of 159.08 feet, to Sta. 616+53.92 which Sta. is a point of tangency; thence running South 4° 02' 45" West a distance of 968.21 feet,

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to Sta. 626+22.13 which Sta. is a point of intersection; thence running South 4° 26' 45" West a distance of 1539.27 feet, to Sta. 641+61.4, which Sta. is a point on tangent and being 642.55 feet, more or less, west along the section line from the Southeast corner of said SE $\frac{1}{4}$  of Section 2, Township 1 North, Range 39 East, Boise Meridian.

Section 11: SE $\frac{1}{4}$  NE $\frac{1}{4}$ ; SE $\frac{1}{4}$ ; NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; EXCEPTING THEREFROM: A strip of land being that portion of the East  $\frac{1}{2}$  of Section 11, Township 1 North, Range 39 East Boise Meridian, lying situate 40 feet right and 40 feet left of the following described centerline of the Lincoln-Bone Road F.A. Route S-6723 as surveyed. Beginning at Sta. 641+61.4 of said survey, which Sta. is a point on tangent and being 642.55 feet, more or less, west along the section line, of the Northeast corner of said East  $\frac{1}{2}$  of Section 11, Township 1 North, Range 39 East Boise Meridian; thence running South 4° 26' 45" West a distance of 1138.6 feet, to Sta. 653+00 which Sta. is a point of intersection; thence running South 4° 10' 45" West a distance of 2500.0 feet, to Sta. 678+00 which Sta. is a point of intersection; thence running South 4° 20' 45" West a distance of 1300.0 feet, to Sta. 691+00 which Sta. is a point of intersection; thence running South 4° 10' 45" West a distance of 396.8 feet, to Sta. 694+96.8 which Sta. is a point on tangent and being 1057.1 feet, more or less west along the section line from the Southeast corner of said East  $\frac{1}{2}$  of Section 11, Township 1 North, Range 39 East Boise Meridian.

Section 12: N $\frac{1}{2}$ N $\frac{1}{2}$ ; S $\frac{1}{2}$ ; S $\frac{1}{2}$  N $\frac{1}{2}$ ;

Section 13: E $\frac{1}{2}$  NE $\frac{1}{4}$ ; NE $\frac{1}{4}$  SE $\frac{1}{4}$ ; N $\frac{1}{2}$  NW  $\frac{1}{4}$ ; NW $\frac{1}{4}$  NE $\frac{1}{4}$ ;

Section 14: NE $\frac{1}{4}$ NE $\frac{1}{4}$ ; EXCEPTING THEREFROM: A strip of land being that portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, Township 1 North, Range 39 East Boise Meridian, lying situate 40 feet right and 40 feet left of the following described centerline of the Lincoln-Bone Road F.A. Route S-6723 as surveyed. Beginning at Sta. 694+96.8 of said survey, which Sta. is a point on tangent and being 1057.1 feet, more or less, west along the section line of the Northeast corner of said NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, Township 1 North, Range 39 East Boise Meridian; thence running South 4° 10' 45" West a distance of 1195.25 feet, to Sta. 706+92.05 which Sta. is a point of curvature; thence running southwesterly along the curve, said curve having a radius of 2864.79 feet and a central angle of 2° 46' 46", a distance of 138.95 feet, to Sta. 708.31, which Sta. is a point on curve and being 1162.8 feet, more or less, west from the Southeast corner of said NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 14, Township 1 North, Range 39 East Boise Meridian.

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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.*

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**EXHIBIT C**  
*Notice List*

<b>GOSHEN PHASE II LLC</b> ("Seller")	<b>SOUTHERN CALIFORNIA EDISON</b> <b>COMPANY ("SCE")</b>
All Notices are deemed provided in accordance with <b>Section Error! Reference source not found.</b> if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with <b>Section Error! Reference source not found.</b> if made to the Contract Sponsor at the address or facsimile number provided below:
<b>Contact Information:</b> Attn: [REDACTED]  Street: [REDACTED]  City: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED] And: Attn: [REDACTED] Street: [REDACTED]  City: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]	<b>Contract Sponsor:</b> Attn: [REDACTED]  Street: [REDACTED] City: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]
<b>Reference Numbers:</b> Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	<b>Reference Numbers:</b> Duns Number: [REDACTED] Federal Tax ID Number: [REDACTED]

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

<b>GOSHEN PHASE II LLC</b> ("Seller")	<b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b>
<b>Contract Administration:</b>  Attn: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]	<b>Contract Administration:</b>  Attn: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]
<b>Remote Operations Centers:</b>  Phone: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]  Manager: [REDACTED] Phone: [REDACTED]  Lead Operations: [REDACTED] Phone: [REDACTED]	<b>Generation Operations Center:</b>  <u>Trading Desk</u> Phone: [REDACTED]  <u>Generation Desk.</u> Phone: [REDACTED]
<b>Day-Ahead Forecasting:</b>  Phone: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]  Manager: [REDACTED] Phone: [REDACTED]  Lead Operations: [REDACTED] Phone: [REDACTED]	<b>Day Ahead Scheduling:</b>  <u>Manager.</u> Attn: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]  <u>Scheduling Desk.</u>  Phone: [REDACTED] Backup: [REDACTED] Fax: [REDACTED] Email: [REDACTED]

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

<p><b>GOSHEN PHASE II LLC</b> ("Seller")</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b></p>
<p><b>Real-Time Forecasting:</b>  Phone: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]  Email: [REDACTED]</p> <p><b>Manager:</b> [REDACTED]  Phone: [REDACTED]</p> <p><b>Lead Operations:</b> [REDACTED]  Phone: [REDACTED]</p>	<p><b>Real-Time Scheduling:</b>  <u>Manager.</u>  Attn: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]</p> <p><u>Operations Desk.</u>  Phone: [REDACTED]  Back-up: [REDACTED]  Fax: [REDACTED]  Email: [REDACTED]</p>
<p><b>Outage Scheduling:</b>  Phone: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]  Email: [REDACTED]</p> <p><b>Lead Operations:</b> [REDACTED]  Phone: [REDACTED]</p>	<p><b>Outage Scheduling:</b>  Phone: [REDACTED]  Email: [REDACTED]</p>
<p><b>Payment Statements:</b>  Attn: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]  Email: [REDACTED]</p>	<p><b>Payment Statements:</b>  Attn: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]  Email: [REDACTED]</p>
<p><b>Payments:</b>  Attn: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]  Email: [REDACTED]</p>	<p><b>Payments:</b>  Attn: [REDACTED]  Phone: [REDACTED]  Facsimile: [REDACTED]  Email: [REDACTED]</p>

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<b>GOSHEN PHASE II LLC</b> ("Seller")	<b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b>
<b>Wire Transfer:</b> BNK: [REDACTED] Account Name: [REDACTED] Reference: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	<b>Wire Transfer:</b> BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
<b>Credit and Collections:</b> Attn: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED] Email: [REDACTED]	<b>Manager of Credit and Collateral:</b> Attn: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]
<b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: Not Applicable Phone: Facsimile: Email:	<b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]
<b>Guarantor:</b> Attn: Not Applicable Phone: Facsimile: Email:	<b>Not Applicable</b>

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



<b>GOSHEN PHASE II LLC</b> ("Seller")	<b>SOUTHERN CALIFORNIA EDISON</b> <b>COMPANY ("SCE")</b>
<b>Lender:</b>  Attn: Not Applicable  Phone: Facsimile:  Email:	<b>Not Applicable</b>

**\*\* 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 requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time-to-time, as necessary to:

- (a) Accommodate changes to their respective generation technology and organizational structure; and
- (b) Address changes in the operating and Scheduling procedures of SCE, 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 Initial Synchronization, Seller shall provide SCE with a 30-day, hourly forecast of the expected available total generation capacity of the Generating Facility, in MW, ("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 Item 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 new Initial Synchronization date at the earliest practicable time but no later than 5:00 p.m. Pacific Prevailing Time ("PPT") on the Wednesday prior to the new Initial Synchronization date, if Seller has learned of the new Initial Synchronization Date by that time, but in no event less than three (3) Business Days prior to the new Initial Synchronization date.

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

- (b) 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 Item 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

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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.

- (c) In the event:
- (i) Seller does not provide real-time communication of availability as provided in Section 3.06(f);
  - (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 results in variance in available capacity in any hour of plus (+) or minus (-) ten percent (10%) from the available capacity reported in the most recent Availability Forecast update, 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 a.m. 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](mailto:presched@sce.com) and within ten (10) minutes thereafter telephone SCE's Scheduling Desk);
- (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 (iv) or (v) above, within twenty (20) minutes if commercially practicable and otherwise within sixty (60) minutes after Seller becomes aware of the event which caused the availability change.

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

3. SCE's Forecast Responsibilities.

SCE shall be responsible for the following:

- (a) Using the Availability Forecast submitted to SCE pursuant to Item 2 above, including updated Availability Forecasts to the extent reasonably practicable, provide the Projected Energy Forecast to the Transmission Provider, if required, in any given hour.
- (b) Adjusting the Projected Energy Forecast for forecasted Electrical 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.

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

**EXHIBIT E**

*PTC Adjustments*

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

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**EXHIBIT E**  
*PTC Adjustments*

Notwithstanding Section 1.06(b) and Section 1.06(c)(i), this Exhibit E sets forth the methodology by which the Energy Price may be adjusted solely in the event the Federal Production Tax Credit Legislation is not in effect at Initial Operation and later comes into effect or fails to remain in effect through the Full Online Date as described Section 2 below.

1. Definitions.

- (a) “PTC Adjustment” means an adjustment (in dollars per MWh) to the Energy Price which shall be calculated using the PTC Neutral Model.
- (b) “PTC Adjustment Date” means the earliest date upon which all of the following conditions have been achieved: (i) the Full Online Date; (ii) the reenactment of Federal Production Tax Credit Legislation (as described in Section 2.(b) of this Exhibit E) or the change in the PTC calculation (as described in Section 2.(c) of this Exhibit E), as applicable, is in full force and effect; and (iii) Seller has calculated, and SCE agrees with, the PTC Adjustment.
- (c) “PTC Adjustment Statement” means a statement provided by Seller to SCE showing the calculations of necessary true-up to account for SCE’s overpayment or, as the case may be, underpayment of Energy Payments (as described in Section 2.(b) and Section 2.(c) of this Exhibit E), plus simple interest calculated based on the Interest Rate, applicable to all Energy Payments paid by SCE to Seller from Initial Operation to the PTC Adjustment Date.
- (d) “PTC Neutral Model” means the financial model to be developed by Seller and approved by SCE which shall (i) function to maintain Seller’s target rate of return by changing the inputs regarding the effective period of the Federal Production Tax Credit Legislation and the terms by which the PTC is calculated; (ii) use as a base price the Energy Prices in Exhibit T-1; and (iii) include the number of Wind Turbines, the date each Wind Turbine is installed, and the expected production of each such category of Wind Turbine based on the Final Wind Report. PTC Neutral Model shall include Seller’s reasonable administration expenses, legal costs and financing costs associated with any associated refinancing of the long-term debt and equity in the Generating Facility.

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2. Applicability of the PTC Adjustment.
  - (a) If the Federal Production Tax Credit Legislation is not in force on the date that Initial Synchronization is achieved, but is thereafter reenacted on or before December 31, 2012 and applied retroactively such that some or all of the Wind Turbines shall qualify for the Federal Production Tax Credit Legislation, then the Energy Price that would otherwise be applicable during the Term shall be decreased by the PTC Adjustment.
  - (b) If any component of the PTC calculation under 26 U.S.C. § 45 changes after the Effective Date but prior to the Full Online Date (such as any change in the period during which PTCs may be claimed, a change in the inflation adjustment factor, or a cap or other limitation on PTCs), then the Parties shall negotiate in good faith to adjust the Energy Price that would otherwise be applicable during the Term to include the PTC Adjustment.
  
3. PTC Adjustment Statements and True-Up Payments.
  - (a) From Initial Operation to the PTC Adjustment Date, SCE shall calculate and pay to Seller Energy Payments based on the Energy Price that is applicable on the date Seller achieves Initial Operation.
  - (b) Following the PTC Adjustment Date and throughout the remainder of the Term, SCE shall calculate and pay to Seller Energy Payments based on the Energy Price that includes the PTC Adjustment.
  - (c) No later than sixty (60) days from the PTC Adjustment Date Seller shall provide the PTC Adjustment Statement to SCE.
  - (d) Upon receipt of the PTC Adjustment Statement sent by Seller to SCE pursuant to this Exhibit E, SCE shall review such statement, request additional information of Seller if necessary, and include any undisputed items in the next monthly statement sent to Seller in accordance with Section 4.04.
  - (e) In the event that the Parties cannot agree on any amounts or items included on the PTC Adjustment Statement, then either Party may refer such Dispute to dispute resolution pursuant to Article 11 of this Agreement.

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

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



**EXHIBIT F**

*Energy Replacement Damage Amount*

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

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**EXHIBIT F***Energy Replacement Damage Amount*1. Energy Replacement Damage Amount Calculation Result.

Seller's Energy Replacement Damage Amount shall be calculated according to the following formula:

ENERGY REPLACEMENT DAMAGE AMOUNT, in dollars

$$= (A - B - C) \times (D - E)$$

Where:

- A = Seller's Annual Energy Delivery Obligation, calculated as set forth in Section 3.05, in kWh.
- B = Sum of Metered Amounts during all Settlement Intervals for the applicable Term Year, in kWh.
- C = Sum of Lost Output and the SA-Curtailed Amounts, if any, over the Term Year, in kWh.
- D = Simple average of the Market Prices for all Settlement Intervals during the Term Year, in dollars per kWh (i.e., \$/MWh/1000).
- E = Energy Price, as set forth in Section 1.06, in dollars per kWh (i.e., \$/MWh/1000).

*provided that*, the result of "(D - E)" shall not be:

- (a) Less than two cents (\$0.02) per kWh; nor
  - (b) Greater than five cents (\$0.05) 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. The Energy Replacement Damage Amount for the first four (4) Term Years shall be recalculated when the Generating Facility Power Curve is completed after the fourth

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RAP ID# 6334, (Goshen Phase II LLC)

- Term Year. With respect to such recalculations, any true-up amount due from Seller, or refundable by SCE, shall not bear interest.
4. In no event will SCE pay an Energy Replacement Damage Amount.
  5. Seller shall not be assessed any Energy Replacement Damage Amount until after the Independent Performance Engineer has completed the Generating Facility Performance Model at the end of the fourth Term Year.

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\*\*\* 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	First Quarter 2010	Submits Amended Interconnection Agreement request, if applicable.
2	First Quarter 2010	Executes an Engineering, Procurement and Construction ("EPC") contract.
3	2 <sup>nd</sup> Quarter 2010	Begins construction of the Generating Facility.
4	3 <sup>rd</sup> Quarter 2010	Achieves Initial Operation.
5	4 <sup>th</sup> Quarter 2010	Demonstrates the Contract Capacity.

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

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*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 CPUC approval is achieved 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 material agreements, EPC contract, material permits, material approvals, material technical studies, financing agreements, and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

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*RAP ID# 6334, (Goshen Phase II LLC)*

13. A status report of start-up activities including a forecast of activities ongoing and after start-up.
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.

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

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



**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*

**FORM OF GUARANTY**

This Guaranty Agreement (the "Guaranty") is made by \_\_\_\_\_, an \_\_\_\_\_ corporation ("Guarantor"), in favor of [OFFTAKER] (individually and collectively, the "Counterparty").

WHEREAS, Counterparty is a party to that certain Renewable Energy Purchase Agreement dated as of \_\_\_\_\_ by and between \_\_\_\_\_ ("Company") and the Counterparty ( the "Agreement"); and

WHEREAS, the Guarantor is an affiliate of Company, and will receive substantial and direct benefits from the transactions contemplated by the Agreement and has agreed to enter into this Guaranty to provide assurance for the payment of fifty percent (50%) of payment obligations of Company in connection with the Agreement and to induce the Counterparty to enter into the Agreement; and

WHEREAS, the other indirect owner of Company (the "Other Owner Guarantor") has agreed to enter into a guaranty substantially similar to this Guaranty (the "Other 50% Guaranty") to provide assurance for the payment of the other fifty percent (50%) of payment obligations of Company in connection with the Agreement and to induce the Counterparty to enter into the Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. **Guaranty.**

- (a) The Guarantor hereby unconditionally, irrevocably and absolutely guarantees the punctual payment when due (subject to written demand in accordance with

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Paragraph 6 below) of fifty percent (50%) of Company's payment obligations arising under the Agreement, as such Agreement may be amended or modified by agreement between Company and the Counterparty from time to time (collectively, the "Guaranteed Obligations"). With respect to the obligations of the Company under the Agreement, the Counterparty must pursue its remedies under this Guaranty and the Other 50% Guaranty provided by Company's Other Owner Guarantor in equal shares among the Guarantor and the Company's Other Owner Guarantor, and the Counterparty may not require the Guarantor to pay more than the Guarantor's fifty percent (50%) share of any of the Company's payment obligations arising under the Agreement.

(b) The total liability of the Guarantor hereunder, regardless of any amendment or modification to the Agreement, is limited to the lesser of (a) the Guaranteed Obligations under the Agreement or (b) \$US\_\_\_\_\_, plus all interest, reasonable attorneys' fees, and/or costs of collection, if any, required by such Agreement to be paid by Company in the collection of Guaranteed Obligations. In addition, subject to the limitations above, Guarantor shall reimburse Counterparty for all sums paid to Counterparty by Company with respect to such Guaranteed Obligations which Counterparty is subsequently required to return to Company or a representative of Company's creditors as a result of Company's bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding.

(c) The Guarantor's obligations and liability under this Guaranty shall be limited to payment obligations only and the Guarantor shall have no obligation to perform under the Agreement, including, without limitation, to sell, deliver, supply or transport gas, electricity or any other commodity.

(d) If all or a part of any payment made by Guarantor to Counterparty hereunder is later determined to have been improper because such amount was not actually owed by Company to Counterparty under the Agreement or such payment was otherwise unjustified, Counterparty shall repay such amount to Guarantor within ten (10) business days of written demand by Guarantor together with any interest, reasonable attorneys' fees, and/or costs of collection, if any, required by the Agreement to be paid by Counterparty in the collection of such amount.

2. **Guaranty Absolute.** The liability of Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:

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- (a) any defect or deficiency in the Agreement or any other documents executed in connection with any Agreement;
- (b) any modification, extension or waiver of any of the terms of the Agreement;
- (c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith;
- (d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any setoff against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;
- (e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by the Counterparty to exercise, in whole or in part, any right or remedy held by the Counterparty with respect to the Agreement or any transaction under the Agreement; or
- (f) any change in the existence, structure or ownership of the Guarantor or Company, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

The obligations of the Guarantor hereunder are several and not joint with Company or any other person, and are primary obligations for which the Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guaranty, except as expressly contained herein. It shall not be necessary for the Counterparty, in order to enforce payment by the Guarantor under this Guaranty, to exhaust its remedies against Company, any collateral pledged by Company, any other guarantor,

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or any other person liable for the payment or performance of the Guaranteed Obligations. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of all such Guaranteed Obligations may be discharged, or uncollectible in any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Company is or may be entitled to arising from or out of the Agreements or otherwise, except as limited herein and except for defenses arising out of the bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Company or its assets.

3. **Waiver.** Guarantor hereby waives:

- (a) except for the acceptance required from Counterparty below, notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed Obligations and notice of any action by the Counterparty in reliance hereon or in connection herewith;
- (b) notice of the entry into the Agreement between Company and the Counterparty and notice of any amendments, supplements or modifications thereto; or any waiver of consent under any Agreement, including waivers of the payment and performance of the obligations thereunder;
- (c) notice of any increase, reduction or rearrangement of Company's obligations under the Agreement or notice of any extension of time for the payment of any sums due and payable to the Counterparty under the Agreement;
- (d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and

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

- (e) any requirement that suit be brought against, or any other action by the Counterparty be taken against, or any notice of default or other notice be given to, or any demand be made on, Company or any other person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.
4. **Subrogation.** The Guarantor shall be subrogated to all rights of the Counterparty against Company in respect of any amounts paid by the Guarantor pursuant to the Guaranty, provided that the Guarantor waives any rights it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise (including, without limitation, any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. §509, or otherwise), reimbursement, exoneration, contribution, indemnification, or any right to participate in any claim or remedy of the Counterparty against Company or any collateral which the Counterparty now has or acquires, until all of the Guaranteed Obligations shall have been irrevocably paid to the Counterparty in full. If (a) the Guarantor shall perform and shall make payment to the Counterparty of all or any part of the Guaranteed Obligations and (b) all the Guaranteed Obligations shall have been paid in full, the Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor appropriate documents necessary to evidence the transfer by subrogation to the Guarantor of any interest in the Guaranteed Obligations resulting from such payment by the Guarantor.
5. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon delivery, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered. Notices shall be sent to the following addresses:

If to Counterparty:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to Guarantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

6. **Demand and Payment.** Counterparty is not entitled to make demand upon Guarantor until a default occurs in payment of any Guaranteed Obligations by Company to Counterparty. Any demand by the Counterparty for payment hereunder shall be in writing, reference this Guaranty, reference the Guaranteed Obligations, and signed by a duly authorized representative of the Counterparty and delivered to the Guarantor pursuant to Section 5 hereof. There are no other requirements of notice, presentment or demand. The Guarantor shall pay, or cause to be paid, such Guaranteed Obligations within ten (10) business days of receipt of such demand.

7. **Costs and Expenses.** In the event Counterparty engages in litigation to enforce this Guaranty, Guarantor agrees to pay, in addition to any amounts of Company which Guarantor has otherwise guaranteed to pay hereunder, any and all costs and expenses

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

- incurred by Counterparty (including reasonable attorneys' fees) in enforcing this Guaranty.
8. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of Counterparty to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
  9. **Term; Termination.** This Guaranty shall continue in full force and effect from the Effective Date until the earlier of (i) the expiration of the Agreement and (ii) the date that all of the Guaranteed Obligations shall have been fully satisfied (the "Termination Date"); provided, however, the termination of this Guaranty shall not affect Guarantor's obligations hereunder with respect to any transaction entered into prior to such Termination Date.
  10. **Assignment; Successors and Assigns.** The Guarantor and the Counterparty shall not assign its rights or obligations hereunder without the prior written consent of the other party, and any assignment without such prior written consent shall be null and void and of no force or effect. A request for consent to assignment pursuant to this Section 10 shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Guarantor may without the prior written consent of the Counterparty assign its rights hereunder to any entity that purchases all or substantially all of the assets of the Guarantor, or upon a permitted assignment of the Agreement, to any entity that shall assume in writing the obligations of the Guarantor, provided such successor entity is (a) organized and domiciled under the laws of the United States, (b) has a credit rating equal or superior to the Guarantor (but in no event worse than at least (i) BBB- from Standard and Poor's and Baa3 from Moody's if it is rated by both Standard and Poor's and Moody's, or (ii) BBB- from Standard and Poor's or Baa3 from Moody's if it is rated by either Standard and Poor's or Moody's but not both; *provided further*, that if such credit rating is exactly equivalent to BBB- or Baa3, such entity must not be on negative credit watch by a rating agency), and (c) such entity must be otherwise acceptable to SCE (which approval shall not be unreasonably withheld or delayed) based upon standards consistently applied by SCE in its evaluation of potential guarantors. This Guaranty shall be binding upon and inure to the benefit of the each party hereto and their respective successors and permitted assigns.



11. **Amendments, Etc.** Subject to the Guarantor's right to terminate this Guaranty pursuant to Paragraph 8, no amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and Counterparty. No waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by Counterparty. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.
  
12. **Caption.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.
  
13. **Representation and Warranties.**

The Guarantor represents and warrants as follows:

- (a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.
  
- (b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.
  
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles.

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

- (d) The person signing this Guaranty on Guarantor's behalf has been properly authorized by corporate action to do so.
14. **Foreign Currency Obligations.** Subject to the limitation of Guarantor's total liability set forth in Paragraph 1 hereof, the Guarantor shall make payment in the currency in which the Company is required to pay its payment obligations (the "Original Currency"). For the purposes of calculating Guarantor's total liability hereunder and applying the limitation on Guarantor's total liability, the value of the payment obligation in the Original Currency shall be converted to US Dollars by the Guarantor at the rate equal to the applicable spot exchange rate of a large commercial bank located in the United States on the date that payment is made by the Guarantor.
15. **GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION.** However, if any provision of this Guaranty shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty.
16. **Entire Agreement and Termination of Prior Guaranty.** This Guaranty constitutes the entire agreement and understanding between Guarantor and Counterparty with respect to the Guaranteed Obligations and supersedes and replaces in its entirety any and all guaranties previously issued by Guarantor to Counterparty with respect to the Guaranteed Obligations, or any part of them.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE  
FOLLOWS**

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

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ ("Effective Date").

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

ACCEPTED AND AGREED TO

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

**[OFFTAKER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[each counterparty must sign]

\*\*\* End of EXHIBIT I \*\*\*

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

**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*

Tab #3

**NON-DISCLOSURE AGREEMENT**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**GOSHEN PHASE II, RIDGELINE ENERGY LLC and BPAE NORTH AMERICA Inc.**

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and GOSHEN PHASE II, a Delaware limited liability company, RIDGELINE ENERGY LLC, a Washington State limited liability company, and BPAE NORTH AMERICA INC, a Delaware corporation (collectively "GPII") hereby enter into this Non-Disclosure Agreement ("Agreement").

SCE and GPII 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 7, 2008, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. GPII desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by GPII to SCE as part of GPII's submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to GPII as part of discussions or negotiations with GPII concerning GPII's Proposal.

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

## 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, or arising out of, the Proposal shall be referred to as "Confidential Information."

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

2. Each Party agrees 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 each Party in writing.

Accordingly, each Party may disclose Confidential Information only to its employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Proposal ("Permitted Disclosee"), or in subsequent discussions or negotiations regarding the Proposal and so long as such disclosing Party advises each Permitted Disclosee of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by such Permitted Disclosee.

Each Party may also disclose Confidential Information to representatives of its rating agencies who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Proposal, so long as such 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 sold to SCE under any agreement reached as a result of discussions or negotiations.

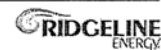
4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:
  - a. Information which is in the public domain as of the Effective Date or which later comes into the public domain from a source other than from the other Party, its Permitted Disclosee or representatives of its rating agencies;
  - b. Information which SCE or GPII can demonstrate in writing was already known to SCE or GPII prior to the Effective Date;
  - c. Information which comes to SCE or GPII from a *bona fide* third party source not under an obligation of confidentiality; or
  - d. Information which is independently developed by SCE or GPII without use of or reference to Confidential Information or information containing Confidential Information.
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 such 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

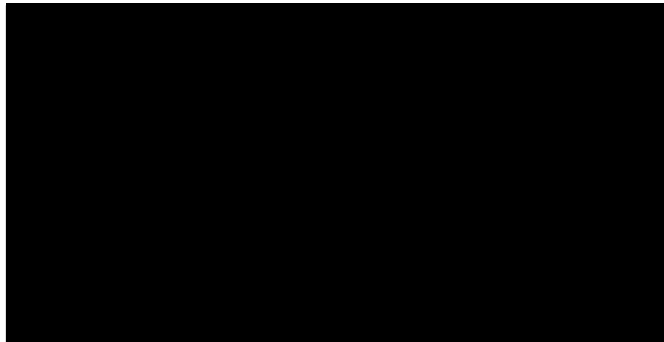


Information, except as required by law or as SCE or GPII may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.

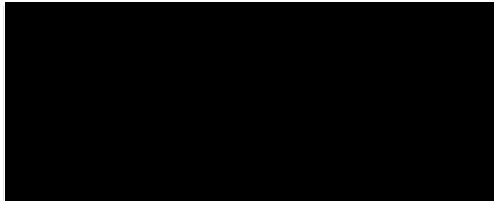
- 8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
- 9. Any notice or communication given pursuant to this Agreement shall be in writing and:
  - a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
  - b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
  - c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

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

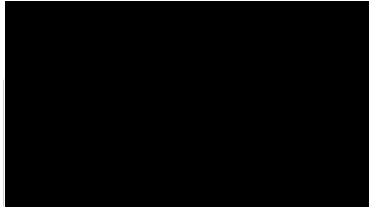
If to SCE:



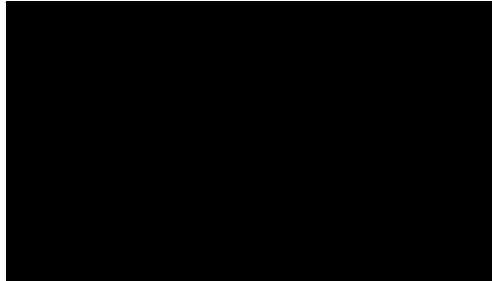
If to GPII:







With copy to:



- 10. This Agreement shall be effective as of the date of the last signature to this Agreement and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").
- 11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.  
  
This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
- 12. Any waiver of the requirements and provisions of this Agreement shall be in writing.  
  
The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
- 13. This Agreement may not be modified except by a written agreement executed by both Parties.
- 14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.

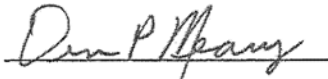


15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
18. This Agreement may be 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 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. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

*[signatures on next page]*


**GOSHEN PHASE II, LLC**  
a Delaware limited liability company

By: **RIDGELINE ENERGY LLC**,  
a Washington limited liability company  
Its: member

By:  
  
Name: Dennis P. Meany  
Its: President


Date: 4/28/08

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

By:  
  
Name: Stuart R. Murphy  
Its: Vice President

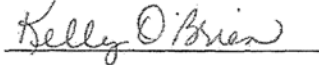
Date: 5/23/08

**RIDGELINE ENERGY LLC**  
a Washington limited liability company

By:  
  
Name: Dennis P. Meany  
Its President

Date: 4/28/08

**BPAE NORTH AMERICA INC**  
a Delaware corporation

By:  
  
Name: Kelly O'Brien  
Its Director, Wind Power Development

Date: 4/30/08



NDA

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

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

**EXHIBIT K**

*SA-Curtailed Amounts*

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

---

## **EXHIBIT K**

### *SA-Curtailed Amounts*

SCE and Seller shall comply with the provisions of this Exhibit K with respect to any claim by Seller for SA-Curtailed Amounts and an SA-Curtailment Payment. There shall be no SA-Curtailed Amounts, or SA-Curtailment Payments made, for any periods prior to Term.

#### 1. Curtailment Report.

Within thirty (30) days after the last day of any month (an “Affected Month”) for which Seller believes an SA-Curtailment Event has occurred and wishes to make a claim for SA-Curtailed Amounts, Seller shall provide SCE with a report (a “Curtailment Report”) containing the following:

- (a) The worksheet from the Curtailment Workbook as described in Attachment K-1 to this Exhibit K containing the recorded data for the Affected Month;
- (b) A statement of Seller’s estimate of SA-Curtailed Amounts for the Affected Month based upon the data in the Curtailment Workbook for the Affected Month,
- (c) Seller’s estimate of the SA-Curtailment Payment, in dollars, owed Seller by SCE based upon the estimated SA-Curtailed Amounts and the formula set forth in Item 9 below;
- (d) An explanation of Seller’s assumptions and methodology with respect to Seller’s determination of the estimated SA-Curtailed Amounts and the SA-Curtailment Payment for the Affected Month;
- (e) Any document supporting such assumptions, methodology and calculations;
- (f) A request that SCE provide a statement of efforts made by the Scheduling Agent to re-direct curtailed transmission relating to the dates and times covered in the Curtailment Report for the Affected Month.

#### 2. Seller’s Waiver.

If Seller does not provide a Curtailment Report for an Affected Month within one year after the end of the Affected Month, *then* Seller will be deemed to have waived any right to claim SA-Curtailed Amounts or request an SA-Curtailment Payment for that Affected Month.

3. Statement of Scheduling Agent's Efforts.

SCE shall provide Seller, within fifteen (15) days after receipt of a Curtailment Report, a statement that describes the Scheduling Agent's efforts to find alternative transactions that resulted in a curtailment of the Generating Facility during the periods covered in the Curtailment Report if the Curtailment Report contains a request for such information.

4. Additional Information.

SCE shall have thirty (30) days after receipt of the Curtailment Report to review the report and request additional information in order to verify the data and calculations presented on the Curtailment Report. Seller shall provide the requested information, if available, within five (5) Business Days after any request for additional information made by SCE.

5. Notice of Error or Acceptance.

Within forty-five (45) days after receipt of the Curtailment Report, SCE either shall provide to Seller:

- (a) A Notice of an error in the Curtailment Report, including SCE's estimate of the SA-Curtailed Amounts and the corresponding SA-Curtailment Payment, if any, for the Affected Month, together with SCE's documentation and assumptions supporting SCE's calculation of SA-Curtailed Amounts and the corresponding SA-Curtailment Payment; or
- (b) A Notice of SCE's acceptance of the Curtailment Report for the Affected Month and the requested SA-Curtailment Payment;

*provided however*, if SCE requests additional information in accordance with Item 4 and Seller fails to fully reply to such request within five (5) Business Days of SCE's request, SCE shall have a day-for-day extension of the 45-day period in which to provide Notice to Seller.

6. SCE's Waiver.

If within forty-five (45) days after receipt of the Curtailment Report, as may be extended pursuant to Item 5, SCE neither requests additional information of Seller nor gives Notice to Seller of an error in the Curtailment Report or SCE's acceptance of such Curtailment Report, *then* SCE will be deemed to have waived any error in the Curtailment Report, the Curtailment Report for such month shall be deemed correct and complete, and SCE shall be deemed to have waived any right to dispute payment for SA-Curtailed Amounts for such month, and the provisions of Items 8 and 9 shall apply.

7. Dispute Resolution.

If SCE provides Seller with Notice of an error in Seller's calculation of SA-Curtailed Amounts or any requested SA-Curtailment Payment owed by SCE and Seller disagrees with SCE's Notice, the Parties shall negotiate in good faith for thirty (30) days to resolve any Dispute. If the Parties are unable to resolve the Dispute within the thirty day period, either Party may submit the Dispute to arbitration in accordance with Section 11.04 of this Agreement. In addition to the foregoing, in the event that SCE disputes a Curtailment Report, then Seller shall be entitled to receive additional information from SCE such as phone logs, and recorded phone conversations (in respect to the hours in question) upon Seller's request and Seller shall have a day-for-day extension of the time for which Seller may respond to SCE's dispute until such time as SCE has delivered any such requested information.

8. Payment for SA-Curtailed Amounts.

Upon acceptance, or deemed acceptance, by SCE of Seller's estimate of SA-Curtailed Amounts, or the resolution of any Dispute regarding SA-Curtailed Amounts pursuant to negotiation between the Parties or mediation or arbitration pursuant to Article Eleven, SCE shall pay Seller the SA-Curtailment Payment for the agreed upon or determined SA-Curtailed Amounts in accordance with the formula set forth in Item 9 and shall apply the additional payment to the next monthly payment statement that SCE calculates. Any amounts owed for SA-Curtailed Amounts shall bear interest at the Interest Rate.

9. Calculation of SA-Curtailment Payment.

Any SA-Curtailment Payment to Seller shall be calculated pursuant to the following formula:

SA-CURTAILMENT PAYMENT, in dollars (\$) =

$$A \times (B + C)$$

Where:

- A = The sum of the SA-Curtailed Amounts for the Affected Month, in kWh.
- B = An amount, expressed in \$/kWh, equal to: (i) the amount of the PTCs to which Seller would have been entitled with respect to SA-Curtailed Amounts; plus (ii) a “gross up” amount to take into account the federal, state and local income tax to Seller on such payments in lieu of PTCs so that the net amount received by Seller, after its payment of federal, state and local income taxes, is equal to the amount set forth in clause (i) of this definition.
- C = The applicable Energy Price specified in Section 1.06, in \$/kWh.



***Attachment K-1***  
***Curtailment Report***

SA-Curtailed Amounts shall be reported by Seller in accordance with the procedures described in this Attachment K-1 to Exhibit K, unless otherwise agreed upon by the Parties.

1. Maintenance of Curtailment Workbook.

Seller shall (1) collect the data specified in Item 2 below in one (1) or more Microsoft Excel Workbooks (the “Curtailment Workbook”) in a form and naming convention to be agreed upon by the Parties and (2) electronically send the Curtailment Workbook to an address provided by SCE.

Seller shall update the Curtailment Workbook after each Affected Month and shall include the worksheet from the Affected Month in its Curtailment Report for that month in accordance with Item 1 of Exhibit K.

The Parties shall work together to refine the Curtailment Workbook and the Curtailment Report on an as needed basis.

2. Log of Lost Output Events and Associated Settlement Intervals.

The log of SA-Curtailment Events and associated Settlement Intervals shall be created on a single, dedicated worksheet that is arranged with:

- (a) One (1) column for a SA-Curtailment Event number;
- (b) One (1) column for the Term Year;
- (c) One (1) column for the calendar month;
- (d) One (1) column for the start date for the SA-Curtailment Event;
- (e) One (1) column for the start time for the SA-Curtailment Event;
- (f) One (1) column for the end date for the SA-Curtailment Event;
- (g) One (1) column for the end time for the SA-Curtailment Event;
- (h) One (1) column for the duration for the SA-Curtailment Event;
- (i) One (1) column for the cause for the SA-Curtailment Event.

3. Wind Speed Data Collection.

Seller shall record average Settlement Interval wind speeds, in increments of one half (0.5) meters per second, and Metered Amounts for the Settlement Interval in the workbook on individual calendar month worksheets.

Each month 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;
- (e) One (1) column for each recorded wind speed measurement;
- (f) One (1) column for each Metered Amounts quantity; and
- (g) One (1) row for each Settlement Interval period.

4. Availability Forecast.

Seller shall provide the Actual Available Capacity of all Wind Turbine generators as measured by such generator's internal turbine controller, as reported on the Actual Availability Report for the applicable time period, for each Settlement Interval during which an SA-Curtailment Event occurred in the Affected Month.

5. Estimated SA-Curtailed Amounts.

For each Term Year starting with the second Term Year, Seller shall calculate the estimated SA-Curtailed Amounts using the Generating Facility Power Curve and the data provided by the power curve for each Settlement Interval during which an SA-Curtailment Event occurred.

6. Other Information.

Seller shall provide such other information reasonably requested by SCE for the determination or verification of SA-Curtailed Amounts and Settlement Intervals during which SA-Curtailment Events occurred.

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\*\*\* 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.*

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## EXHIBIT L

### *Procedure for Partial or Full Return of Development Security*

1. Seller's Request for Development Security Refund.

Seller shall provide Notice to SCE of its request for Development Security refund and release of the Development Security Interest, if any, based upon either of the following:

- (a) Termination pursuant to Section 2.05(a) or Section 5.05; or
- (b) Seller has completed installation of all or a portion of the Wind Turbines in accordance with this Agreement.

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 Demonstrating Contract Capacity.

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

- (a) Complete a site visit to verify that the Generating Facility was developed in accordance with the Generating Facility and Site Description set forth in Exhibit B and to determine the Demonstrated Contract Capacity. Such Demonstrated Contract Capacity shall be equal to the Generating Facility Capacity as calculated at that time.
- (b) If the Demonstrated Contract Capacity as determined in Item 3(a) above is greater than or equal to the Contract Capacity, *then* Seller shall qualify to receive a full return of the Development Security.
- (c) If the Demonstrated Contract Capacity as determined in Item 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 based upon the level of the Demonstrated Contract Capacity.

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

RAP ID# 6334, (Goshen Phase II LLC)

- (d) Based upon the information in Item 3(a), calculate the amount of Development Security refund due Seller pursuant to Sections 1.01(e).
- (e) Provide Notice to Seller of the amount of Development Security being returned pursuant to Item 3(d), the amount of Development Security forfeited, as applicable, and the reason(s) that a forfeiture of all or part of the Development Security is appropriate.
- (f) Return any Development Security due Seller if such Development Security was posted in the form of cash.
- (g) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Security is due Seller. If Seller is only entitled to a partial return of the Development Security SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Security forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

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

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

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

**EXHIBIT M**

*Seller's Estimate of Lost Output*

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

**EXHIBIT M***Seller's Report of Lost Output Settlement Intervals*

Lost Output Settlement Intervals shall be reported by Seller in accordance with the procedures described in this Exhibit M.

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

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

1. Log of Lost Output Events and Associated Settlement Intervals.

The log of Lost Output events and associated Settlement Intervals 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.

2. Wind Speed Data Collection.

Seller shall record average Settlement Interval wind speeds, in increments of one half (0.5) meters per second, and Qualified Amounts (if any) for the Settlement Interval 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;
- (e) One (1) column for each recorded wind speed measurement;
- (f) One (1) column for any Qualified Amounts quantity; and
- (g) One (1) row for each Settlement Interval period.

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\*\*\* 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.*

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**EXHIBIT N**  
*Form of Letter of Credit*

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:



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 Goshen Phase II LLC, a Delaware limited liability company, 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.

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:

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

RAP ID# 6334, (Goshen Phase II LLC)

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

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

\_\_\_\_\_  
(Name)

Title: \_\_\_\_\_

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

**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 \_Goshen Phase II LLC, a Delaware limited liability company (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.

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

- [ ]C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
  - [ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date thereof (“Notice of Non-renewal”), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
  - [ ]E. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.
  - [ ]F. The Beneficiary is entitled to retain the entire Development Security as a result of Applicant’s failure to achieve Initial Operation of the full Contract Capacity by the Startup Deadline or any extended Startup Deadline as provided in the Agreement, or the Agreement has terminated due to an Event of Default by Applicant prior to the Startup Deadline.
  - [ ]G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of \$10 per kilowatt times the Unincluded Capacity in kilowatts as a result of Applicant demonstrating only a portion of the Contract Capacity.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.\$\_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
  3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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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.

# Southern California Edison

*Confidential Information*

*RAP ID# 6334, (Goshen Phase II LLC)*

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:

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

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

**EXHIBIT O**

*Independent Performance Engineer*

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

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**EXHIBIT O***Independent Performance Engineer*1. Introduction.

This Exhibit O sets forth the responsibilities of the Independent Performance Engineer relative to the development of the Generating Facility Performance Model.

2. Independent Performance Engineer's Responsibilities.

The Independent Performance Engineer shall:

- (a) Execute a non-disclosure agreement with Seller and SCE that requires it to maintain the confidentiality of all data and information relating to or provided or generated in connection with:
  - (i) This Agreement;
  - (ii) The Generating Facility;
  - (iii) The Generating Facility Power Curve; and
  - (iv) The Generating Facility Performance Model.
- (b) Submit a set of design criteria for the development of the Generating Facility Power Curve to SCE and Seller;
- (c) Develop and submit to Seller and SCE for their approval the Generating Facility Power Curve;
- (d) Submit a set of design criteria for the development of the Generating Facility Performance Model to SCE and Seller for their approval;
- (e) Develop and submit to Seller and SCE for their approval the Generating Facility Performance Model;
- (f) Test the Generating Facility Power Curve and Generating Facility Performance Model using the Actual Site Wind Data and Metered Amounts for the second, third and fourth Term Years;
- (g) Compare the Term Year Estimate of Metered Amounts produced by the Generating Facility Performance Model against the power curve for each wind turbine generator model installed at the Generating Facility;

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

RAP ID# 6334, (Goshen Phase II LLC)

- (h) Review Seller's designs and specifications for the Meteorological Equipment and communicate any recommendations regarding such designs and specifications to Seller and SCE;
- (i) Review Seller's procedures for maintenance and calibration of the Meteorological Equipment and communicate any recommendations regarding such maintenance and calibration to Seller and SCE;
- (j) Review Seller's plan for collecting Actual Site Wind Data and communicate any recommendations regarding such plan to Seller and SCE; and
- (k) Review Seller's Generating Facility Performance Model Reports for the second, third and fourth Term Years.

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

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

**EXHIBIT P**

*Seller's Financial Information for Consolidation*

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

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## **EXHIBIT P**

### *Seller's Financial Information for Consolidation*

Seller and SCE agree that if SCE provides Notice to Seller pursuant to Section 3.23:

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

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

Seller shall prepare its financial statements to be delivered under the terms of Section 3.23 and this Exhibit P in accordance with accounting principles generally accepted in the United States of America.

2. 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.
3. 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.
4. 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 3.23 and this Exhibit P.

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

5. As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to SCE a Notice describing such occurrence in sufficient detail to permit SCE to make a Form 8-K filing with the United States Securities and Exchange Commission. Such occurrences include all reportable events on the then-current Form 8-K that applies to SCE and its parent company at such time, including the following events:
  - (a) Acquisition or disposition of a material amount of assets;
  - (b) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
  - (c) Existence of material litigation; and
  - (d) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent.
  
6. SCE shall treat Seller's financial statements or other financial information provided under the terms of Section 3.23 and this Exhibit P in strict confidence and, accordingly:
  - (a) 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
  - (b) 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 10.09.

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

**EXHIBIT Q**

*SCE Penalties*

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

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**EXHIBIT Q***SCE Penalties*

This Exhibit Q sets forth the procedure for determining Seller's liability for an SCE Penalty (as defined below) in the event Seller fails to comply with the availability forecasting requirements of Exhibit D.

1. Determining Potential Applicability of SCE Penalty.

(a) In the event Seller does not:

- (i) Provide real-time communication of availability as provided in Section 3.06(f);
- (ii) Maintain the telecommunications path in order for SCE to obtain real-time data; or
- (iii) Repair or replace faulty instrumentation;

SCE will review the Actual Availability Report to determine if Seller complied with its obligation as set forth in Exhibit D to provide availability forecasts for the month covered by the report. If SCE determines that:

- a. Seller did not comply with its availability forecasting requirements for any hour during the month; and
- b. The Availability Deviation for such hour exceeds the Performance Tolerance Band (as defined below);

*then* Seller may be responsible for SCE Penalties as set forth below.

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

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

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

2. SCE Penalty.

- (a) Subject to Items 2.(b) and 2.(c) below, the SCE Penalty shall be one hundred fifty percent (150%) of the applicable Energy Price set forth in Exhibit T-1 (as may be adjusted in accordance with this Agreement) for each MWh of Availability Deviation, or any portion thereof, in every hour for which Seller fails to meet the requirements in Item 1.(a) above (the “SCE Penalty”).
- (b) 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 meet the requirements in Item 1.(a).
- (c) The SCE Penalty will be assessed during any hour of any calendar day thereafter in that month in which Seller fails to meet the requirements in Item 1.(a).

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



**EXHIBIT R**

*Actual Availability Report*

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

## **EXHIBIT R**

### *Actual Availability Report*

Pursuant to Section 3.22, Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Exhibit R.

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 Generating Facility.

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 R.

The data presented in the Availability Workbook shall not reflect any electric energy losses between the 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																								
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Date and time will recalculate when saving file

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

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

**EXHIBIT S**

*Meteorological Station Specifications*

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

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**EXHIBIT S***Meteorological Station Specifications*

Pursuant to Section 3.06(e), Seller shall install and maintain at least two (2) stand-alone meteorological equipment stations at the Generating Facility. If Seller installs any additional capacity beyond the Base Capacity, as permitted under Section 2.08, then Seller shall install and maintain at least one (1) additional stand-alone meteorological equipment station at the Generating Facility.

Each station shall be equipped with instruments and equipment that meet or exceed those specifications set forth below. SCE and Seller acknowledge that SCE may update this Exhibit S from time to time in order to accommodate industry standards and the needs of SCE; provided that if an update to Exhibit S made by SCE requires Seller to install new equipment in excess of (i) ten thousand dollars (\$10,000) prior to commencement of the Term and/or (ii) twenty-five thousand dollars (\$25,000) throughout the Term (both (i) and (ii), the "Met Cost Limit"), then SCE shall be responsible for all documented costs related to the purchase of such new equipment that is in excess of the Met Cost Limit for the respective time period. SCE agrees to allow Seller to install additional equipment on each meteorological tower. To ensure high quality data collection, such equipment will be installed in accordance with international standard IEC 61400-12-1:2005(E).

1. Equipment Stations.

- (a) The equipment stations shall be comprised of the following:
  - (i) A minimum of two (2) heated wind sensors;
  - (ii) A minimum of two (2) air temperature sensors; and
  - (iii) A minimum of one (1) barometric pressure sensor (with DCP sensor).
- (b) The wind sensors and air temperature sensors shall be set at two (2) height locations from ground level:
  - (i) One combination ultrasonic wind sensor capable of measuring wind speed and wind direction, and one temperature sensor, both of which shall be set at the height that represents the lowest blade tip when positioned at a ninety degree angle with the ground; and
  - (ii) One combination ultrasonic wind sensor capable of measuring wind speed and wind direction, and one temperature sensor, both of which shall be set at the height that represents the hub center of the turbines.

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

2. Attributes of Equipment Station Locations.

The equipment station shall be placed in accordance with the international standard IEC 61400-12-1:2005(E). The equipment station location(s) should be unencumbered by tower shadow or other equipment. If an equipment station tower is being placed on the Site, the tower is to be placed in front of generating turbines on the upwind side of the wind park, as determined by the wind rose. The second station is best placed at the rear of the park as determined by the wind rose, or in another location a mutually agreed.

3. Communication.

Seller shall communicate meteorological data to SCE via the system described in Section 4(d) below.

4. Minimum Equipment Requirements.

SCE currently requires equipment with quality levels and compatibility and functional specifications that meet or exceed those of the equipment set forth below in this Item 4. Any equipment different from that listed below must have the approval of SCE prior to installation at the Site

(a) MAWS301 AWS System.

(i) MAWS301 Basic 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

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

- (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

(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
- (v) WS425STDH-SPEC-30m Shielded RS485 cabling from MAWS301 to WS425STDH - 30m cables
- (vi) QSA224DC Surge Arrestor for RS485 lines, wind sensors at 30m

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\*\*\* End of EXHIBIT S\*\*\*

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



## EXHIBIT T-1

### *Energy Prices With PTC in Effect*

Year		Energy Price Option 1 with Low Price Limitations under Section 129(i) of Exhibit A (0 Hours)	Energy Price Option 3 with Low Price Limitations under Section 129(iii) of Exhibit A (200 Hours)	Energy Price Option 2 with Low Price Limitations under Section 129(ii) of Exhibit A (100 Hours)
2009	\$ per MWh	81.80	84.64	83.22
2010	\$ per MWh	83.85	86.76	85.30
2011	\$ per MWh	85.94	88.92	87.43
2012	\$ per MWh	88.09	91.15	89.62
2013	\$ per MWh	90.29	93.43	91.86
2014	\$ per MWh	92.55	95.76	94.16
2015	\$ per MWh	94.86	98.16	96.51
2016	\$ per MWh	97.23	100.61	98.92
2017	\$ per MWh	99.67	103.13	101.40
2018	\$ per MWh	102.16	105.70	103.93
2019	\$ per MWh	104.71	108.35	106.53
2020	\$ per MWh	107.33	111.06	109.19
2021	\$ per MWh	110.01	113.83	111.92
2022	\$ per MWh	112.76	116.68	114.72
2023	\$ per MWh	115.58	119.59	117.59
2024	\$ per MWh	118.47	122.58	120.53
2025	\$ per MWh	121.43	125.65	123.54
2026	\$ per MWh	124.47	128.79	126.63
2027	\$ per MWh	127.58	132.01	129.79
2028	\$ per MWh	130.77	135.31	133.04
2029	\$ per MWh	134.04	138.69	136.37
2030	\$ per MWh	137.39	142.16	139.77
2031	\$ per MWh	140.82	145.71	143.27

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

## EXHIBIT T-2

### *Energy Prices to be Paid during Low Price Period*

Year		Low Price
2009	\$ per MWh	40.00
2010	\$ per MWh	41.00
2011	\$ per MWh	42.03
2012	\$ per MWh	43.08
2013	\$ per MWh	44.15
2014	\$ per MWh	45.26
2015	\$ per MWh	46.39
2016	\$ per MWh	47.55
2017	\$ per MWh	48.74
2018	\$ per MWh	49.95
2019	\$ per MWh	51.20
2020	\$ per MWh	52.48
2021	\$ per MWh	53.80
2022	\$ per MWh	55.14
2023	\$ per MWh	56.52
2024	\$ per MWh	57.93
2025	\$ per MWh	59.38
2026	\$ per MWh	60.86
2027	\$ per MWh	62.39
2028	\$ per MWh	63.95
2029	\$ per MWh	65.54
2030	\$ per MWh	67.18
2031	\$ per MWh	68.86

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### EXHIBIT T-3

#### *Energy Prices Without PTC in Effect*

Year		Energy Price Option 1 with Low Price Limitations under Section 129(i) of Exhibit A (0 Hours)	Energy Price Option 3 with Low Price Limitations under Section 129(iii) of Exhibit A (200 Hours)	Energy Price Option 2 with Low Price Limitations under Section 129(ii) of Exhibit A (100 Hours)
2009	\$ per MWh	105.40	109.83	107.62
2010	\$ per MWh	108.04	112.58	110.31
2011	\$ per MWh	110.74	115.39	113.07
2012	\$ per MWh	113.50	118.27	115.89
2013	\$ per MWh	116.34	121.23	118.79
2014	\$ per MWh	119.25	124.26	121.76
2015	\$ per MWh	122.23	127.37	124.81
2016	\$ per MWh	125.29	130.55	127.93
2017	\$ per MWh	128.42	133.82	131.12
2018	\$ per MWh	131.63	137.16	134.40
2019	\$ per MWh	134.92	140.59	137.76
2020	\$ per MWh	138.29	144.11	141.21
2021	\$ per MWh	141.75	147.71	144.74
2022	\$ per MWh	145.30	151.40	148.36
2023	\$ per MWh	148.93	155.19	152.06
2024	\$ per MWh	152.65	159.07	155.87
2025	\$ per MWh	156.47	163.04	159.76
2026	\$ per MWh	160.38	167.12	163.76
2027	\$ per MWh	164.39	171.30	167.85
2028	\$ per MWh	168.50	175.58	172.05
2029	\$ per MWh	172.71	179.97	176.35
2030	\$ per MWh	177.03	184.47	180.76
2031	\$ per MWh	181.45	189.08	185.28

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**EXHIBIT U**  
*Metering*

1. Description.

PacifiCorp will install Metering at the Wolverine Creek Generation Interconnection LLC (“WCGI”) collector substation for both generating projects connected to the WCGI 161kV line. PacifiCorp will own and maintain the new revenue meters.

One new Meter will record the energy produced and the station service used for the Wolverine Creek Energy (“WCE”) project, and one new Meter will record the energy produced and the station service used for the Goshen Phase II project. The Meter for each project will contain an algorithm that calculates and adjusts for that project's losses from the location of the Meters to the Delivery Point (as defined in Exhibit A). The Meter and loss adjustments for each project are independent, and one project's Meter reading or loss adjustment will not affect the other project's meter reading or loss adjustment.

As a result, the WCE project will have its own revenue-quality Meter that directly records WCE project's production and station service, and the Goshen Phase II project will have its own Revenue Meter that directly records the Goshen Phase II project's production and station service usage. The existing revenue-quality Meters at the Goshen substation will remain for backup purposes only and will no longer be used for normal revenue metering.

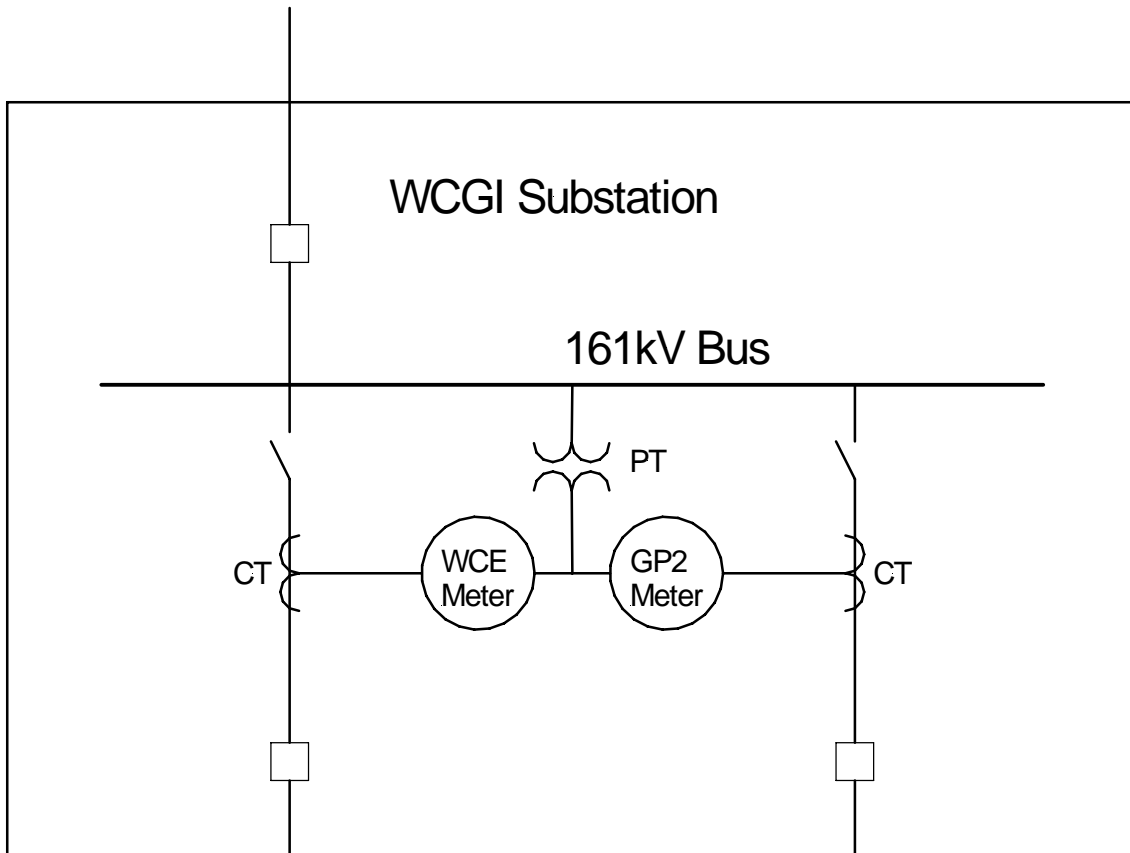
If PacifiCorp changes the Revenue Metering, Exhibit U will be revised to accurately describe the new Revenue Metering.

2. Metering One-Line Diagram.

This following diagram is conceptual and does not show physical locations within the WCGI substation.

# Conceptual Meter One Line Diagram

To Goshen Substation



To WCE (Phase I)

To Goshen Phase II

\*\*\* End of EXHIBIT U\*\*\*

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

**EXHIBIT V-1**

*Form of Security Agreement (Personal Property)*

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**EXHIBIT V-1**

*Form of Security Agreement (Personal Property)*

This **SECURITY AGREEMENT** (this “**Agreement**”) is dated as of \_\_\_\_\_, 20\_\_ and entered into by and among Goshen Phase II LLC, a Delaware limited liability company (“**Grantor**”), and Southern California Edison Company, a California corporation (“**Secured Party**”).

**PRELIMINARY STATEMENTS**

A. Secured Party has entered that certain Renewable Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 20\_\_ by and between Grantor and Secured Party (said Renewable Power Purchase and Sale Agreement, as it may hereafter be amended, restated, supplemented or otherwise modified from time to time, being the “**Power Purchase Agreement**”), pursuant to which Grantor has agreed, subject to the terms and conditions set forth therein, to construct, own and operate a wind-powered electric generating facility and sell electric energy produced by the electric generating facility as specified therein, together with certain related attributes and benefits, to Secured Party, and Secured Party has agreed, subject to the terms and conditions set forth therein, to purchase such electric energy with such related attributes and benefits.

B. Pursuant to Section 8.04 of the Power Purchase Agreement, in order to induce Secured Party to enter into the Power Purchase Agreement and to accept a reduced Performance Assurance Amount, Grantor has agreed to execute and deliver this Agreement and grant the security interests and undertake the obligations contemplated by this Agreement.

**NOW, THEREFORE**, in consideration of the premises and further valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby agrees with Secured Party as follows:

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## **SECTION 1. Grant of Security.**

1.01 Grantor hereby assigns to Secured Party, and hereby grants to Secured Party a security interest in, all of Grantor's right, title and interest in and to all of the personal property of Grantor including the following, in each case whether now or hereafter existing, whether tangible or intangible, whether now owned or hereafter acquired and wherever the same may be located (the "**Collateral**"):

- a) all Accounts;
- b) all Chattel Paper;
- c) all Money and all Deposit Accounts;
- d) all Documents;
- e) all General Intangibles (including patents, trademarks, service marks, copyrights, and other intellectual property), Payment Intangibles, Permits and Software;
- f) all Goods, including Inventory, Equipment, and Fixtures;
- g) all Instruments;
- h) all Investment Property;
- i) all Letter-of-Credit Rights and other Supporting Obligations;
- j) all Records;
- k) all Commercial Tort Claims listed on Schedule 3; and
- l) all Proceeds and Accessions with respect to any of the foregoing Collateral.

Each category of Collateral set forth above other than "Development Security" and "Permits" shall have the meaning set forth in the UCC, it being the intention of Grantor that the description of the Collateral set forth above be construed to include the broadest possible range of assets. Such security interest shall be subordinate in right of payment, priority and remedies only to the interests of a Lender, if any, pursuant to the terms of a Subordination Agreement.

## **SECTION 2. Security for Obligations.**

2.01 This Agreement secures, and the Collateral is collateral security for, the prompt payment in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, and the performance of all Secured Obligations of Grantor. "**Secured Obligations**" means Grantor's obligation to make any payments to SCE as such

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obligation may be extended, reduced or modified in accordance with the Power Purchase Agreement. This Agreement does not secure any obligations under the Power Purchase Agreement other than those monetary obligations of Seller that may arise during the Term of the Power Purchase Agreement. Notwithstanding anything to the contrary herein or in the Power Purchase Agreement, the maximum amount of the Obligations secured hereby shall not exceed the liability caps set forth in Article Seven of the Power Purchase Agreement plus any costs incurred to protect the lien and rights created by this Agreement, to enforce the terms of this Agreement or to foreclose this Agreement against any or all of the Mortgaged Property.

### **SECTION 3. Representations and Warranties.**

3.01 Grantor represents and warrants as follows:

- (a) **Jurisdiction of Organization.** Grantor's name as it appears in official filings in the state of its organization, type of organization (i.e. corporation, limited partnership, etc.), jurisdiction of organization and organization number provided by the applicable government authority of the jurisdiction of organization are set forth on Schedule 1 annexed hereto.
- (b) **Names.** Neither Grantor nor any predecessor by merger or otherwise has, within the five year period preceding the date hereof had a different name from the name of Grantor listed on the signature pages hereof, except as set forth on Schedule 2 annexed hereto.
- (c) **Due Authorization, etc.** Grantor is duly formed, validly existing and in good standing under the law of its jurisdiction of organization and has full entity power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary entity action. This Agreement constitutes a legally valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles.
- (d) **No Conflict.** The execution, delivery and performance of this Agreement by Grantor will not violate the organizational documents of Grantor, any provision of law applicable to Grantor or any order, judgment or decree of any court or other governmental agency binding on Grantor.
- (e) **Security Interests.** The security interests in the Collateral granted hereunder constitute valid security interests in the Collateral, securing payment and performance of the Secured Obligations.
- (f) **No Prior Encumbrances.** Grantor is the legal, record and beneficial owner of the Collateral and its interests in the Collateral are owned by Grantor free and clear of

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any liens, security interests, claims and encumbrances other than Permitted Liens and the lien created in this Agreement and in the Power Purchase Agreement in favor of Secured Party.

**SECTION 4. Further Assurances.**

4.01 Grantor agrees that from time to time, at the expense of Grantor, Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Grantor will: (a) (i) execute (if necessary) and file such financing or continuation statements, or amendments thereto, (ii) execute and deliver, and cause to be executed and delivered, agreements establishing that Secured Party has control of Deposit Accounts and Investment Property of Grantor, and (iii) deliver such other instruments or notices, in each case, as may be necessary or desirable, or as Secured Party may request, in order to perfect and preserve the security interests granted or purported to be granted hereby; (b) furnish to Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail; (c) at any reasonable time, upon request by Secured Party, exhibit the Collateral to and allow inspection of the Collateral by Secured Party, or persons designated by Secured Party; (d) at Secured Party's request, appear in and defend any action or proceeding that may affect Grantor's title to or Secured Party's security interest in all or any part of the Collateral; (e) supplement Schedule 3 hereof by listing any Commercial Tort Claims arising after the date hereof; (f) supplement Schedule 4 hereof by listing any IP arising after the date hereof; and (g) use commercially reasonable efforts to obtain any necessary consents of third parties to the creation and perfection of a security interest in favor of Secured Party with respect to any Collateral. Grantor hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral (including any financing statement indicating that it covers "all assets" or "all personal property" of Grantor).

**SECTION 5. Certain Covenants of Grantor.**

- 5.01 Grantor must:
- (a) give Secured Party at least 30 days' prior written notice of any change in Grantor's name, identity or corporate structure;
  - (b) give Secured Party at least 30 days' prior written notice of any reincorporation, reorganization or other action that results in a change of the jurisdiction of organization of Grantor;

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- (c) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, services, materials and supplies) against, the Collateral except to the extent the validity thereof is being contested in good faith; provided that Grantor shall in any event pay such taxes, assessments, charges, levies or claims not later than five days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against Grantor or any of the Collateral as a result of the failure to make such payment; and
- (d) permit representatives of Secured Party at any time during normal business hours to inspect and make abstracts from Records of the Collateral, and Grantor agrees to render to Secured Party, at Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto.

5.02 Grantor may not:

- (a) use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral; or
- (b) other than Permitted Liens or any lien or security interest granted to a Lender, encumber or grant any liens or security interests or any other interest in or to the Collateral to any other person without the prior written consent of Secured Party and the execution of a subordination agreement by such other person in favor of Secured Party.

## **SECTION 6. Special Covenants with respect to Accounts.**

6.01 Except as otherwise provided in this Section 6, Grantor shall continue to collect, at its own expense, all amounts due or to become due to Grantor under the Accounts. In connection with such collections, Grantor may take (and, upon the occurrence and during the continuance of an Event of Default at Secured Party's direction, shall take) such action as Secured Party may deem necessary or advisable to enforce collection of amounts due or to become due under the Accounts; provided, however, that, subject to the Subordination Agreement, Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to Grantor of its intention to do so, to (a) notify the account debtors or obligors under any Accounts of the assignment of such Accounts to Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to Grantor thereunder directly to Secured Party, (b) notify each Person maintaining a lockbox or similar arrangement to which account debtors or obligors under any Accounts have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or

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other arrangement directly to Secured Party, (c) enforce collection of any such Accounts at the expense of Grantor, and (d) adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Grantor might have done. After receipt by Grantor of the notice from Secured Party referred to in the proviso to the preceding sentence, (i) all amounts and proceeds (including checks and other Instruments) received by Grantor in respect of the Accounts shall be received in trust for the benefit of Lender and Secured Party hereunder, shall be segregated from other funds of Grantor and shall be forthwith paid over or delivered to Secured Party in accordance with the Subordination Agreement and in the same form as so received (with any necessary endorsement), and (ii) Grantor shall not, without the written consent of Secured Party, adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon.

**SECTION 7. Secured Party Appointed Attorney-in-Fact.**

7.01 Subject to the Subordination Agreement, Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Secured Party or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument that Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

- (a) upon the occurrence and during the continuance of an Event of Default, to obtain and adjust insurance required to be maintained by Grantor;
- (b) upon the occurrence and during the continuance of an Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;
- (c) upon the occurrence and during the continuance of an Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents, Chattel Paper and other documents in connection with clauses (a) and (b) above;
- (d) upon the occurrence and during the continuance of an Event of Default, to file any claims or take any action or institute any proceedings that Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce or protect the rights of Secured Party with respect to any of the Collateral;
- (e) to pay or discharge liens (other than liens permitted under this Agreement or the Power Purchase Agreement) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Secured Party in its sole discretion, any such

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payments made by Secured Party to become obligations of Grantor to Secured Party, due and payable immediately without demand;

- (f) upon the occurrence and during the continuance of an Event of Default, to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral; and
- (g) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner thereof for all purposes, and to do, at Secured Party's option and Grantor's expense, at any time or from time to time, all acts and things that Secured Party deems necessary to protect, preserve or realize upon the Collateral and Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

#### **SECTION 8. Secured Party May Perform; Standard of Care.**

Subject to the Subordination Agreement, if Grantor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by Grantor under Section 11.02 hereof. The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property.

#### **SECTION 9. Remedies.**

9.01 All remedies provided to Secured Party under this Section 9 shall be subject to the terms and conditions of the Subordination Agreement.

9.02 **Generally.** If any Event of Default shall have occurred and be continuing, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) require Grantor to, and Grantor hereby agrees that it will at Secured Party's expense and upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties, (ii) enter onto the property where any

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Collateral is located and take possession thereof with or without judicial process, (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent Secured Party deems appropriate, (iv) take possession of Grantor's premises or place custodians in exclusive control thereof, remain on such premises and use the same and any of Grantor's equipment for the purpose of completing any work in process, taking any actions described in the preceding clause (iii) and collecting any Secured Obligation, (v) sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable, (vi) exercise dominion and control over and refuse to permit further withdrawals from any Deposit Account maintained with Secured Party and provide instructions directing the disposition of funds in Deposit Accounts not maintained with Secured Party and (vii) provide entitlement orders with respect to Security Entitlements and other Investment Property constituting a part of the Collateral and, without notice to Grantor, transfer to or register in the name of Secured Party or any of its nominees any or all of the Collateral constituting Investment Property. Secured Party may be the purchaser of any or all of the Collateral at any such sale and Secured Party, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by Secured Party at such sale. Grantor hereby waives any claims against Secured Party arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantor shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency. Grantor further agrees that a breach of any of the covenants contained in this Section 9 will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 9 shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

**9.03 Intellectual Property.** In addition to, and not by way of limitation of, the granting of a security interest in the Collateral pursuant hereto, Grantor, effective upon the occurrence and during the continuation of an Event of Default, hereby assigns, transfers and conveys to Secured Party the nonexclusive right and license to use all trademarks, tradenames, copyrights, patents, technical processes or licenses owned or used by Grantor that relate to the Collateral (the "**IP**," which such IP is listed on Schedule 4), together with any goodwill associated therewith, all to the extent necessary to enable Secured Party to realize on the Collateral in accordance with this Agreement and to enable any transferee or assignee of the Collateral to enjoy the benefits of the Collateral. This right shall inure to the benefit of all successors, assigns and transferees of Secured Party and its successors, assigns and transferees,

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whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license shall be granted free of charge, without requirement that any monetary payment whatsoever be made to Grantor.

**SECTION 10. Application of Proceeds.**

Except as expressly provided in the Subordination Agreement or elsewhere in this Agreement, all proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in the following order of priority:

FIRST: To the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Secured Party and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Secured Party in connection therewith, and all amounts for which Secured Party is entitled to indemnification hereunder and all advances made by Secured Party hereunder for the account of Grantor, and to the payment of all costs and expenses paid or incurred by Secured Party in connection with the exercise of any right or remedy hereunder;

SECOND: To the payment of all other Secured Obligations and, as to obligations arising under the Power Purchase Agreement, as provided in the Power Purchase Agreement; and

THIRD: To the payment of any surplus then remaining from such proceeds to or upon the order of Grantor, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**SECTION 11. Indemnity and Expenses.**

11.01 Grantor agrees to indemnify Secured Party from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement), except to the extent such claims, losses or liabilities result solely from Secured Party's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction.

11.02 Grantor agrees to pay to Secured Party upon demand the amount of any and all reasonable costs and expenses, including the fees and expenses of counsel and of any experts and agents, that Secured Party may incur in connection with the custody or preservation of the Collateral, the exercise of rights or remedies hereunder or the failure by Grantor to perform or observe any of the provisions hereof.

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11.03 The obligations of Grantor in this Section 11 shall survive the termination of this Agreement and the discharge of Grantor's other obligations under this Agreement and the Power Purchase Agreement.

**SECTION 12. Amendments; Etc.**

No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by Grantor therefrom, shall in any event be effective unless the same shall be in writing and signed by Secured Party and, in the case of any such amendment or modification, by Grantor. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**SECTION 13. Notices.**

Any notice or other communication herein required or permitted to be given shall be in writing and may be personally served or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile, or three business days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to Secured Party shall not be effective until received. For the purposes hereof, the address of each party hereto shall be set forth under such party's name on the signature pages hereof or such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

**SECTION 14. Failure or Indulgence Not Waiver; Remedies Cumulative; Severability.**

14.01 No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

14.02 In case any provision in or obligation under this Agreement 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.

**SECTION 15. Continuing Security Interest; Transfer of Interests under Power Purchase Agreement; Termination and Release.**

15.01 This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full and performance of the Secured Obligations (other than Unasserted Obligations), (ii) be binding upon Grantor and its successors

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and assigns, and (iii) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), in connection with Secured Party's assignment or transfer of its interests under the Power Purchase Agreement to any other Person, Secured Party may also assign or transfer to such other Person all the benefits in respect thereof granted to Secured Party herein or otherwise.

15.02 Upon the payment in full of all Secured Obligations (other than Unasserted Obligations) and performance by Grantor of its obligations under the Power Purchase Agreement, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Grantor. Upon any such termination Secured Party will, at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence such termination.

**SECTION 16. Headings.**

Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

**SECTION 17. Governing Law; Rules of Construction.**

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING, WITHOUT LIMITATION, SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF CALIFORNIA, IN WHICH CASE THE LAWS OF SUCH JURISDICTION SHALL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL.

**SECTION 18. Consent to Jurisdiction and Service of Process.**

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GRANTOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OBLIGATIONS HEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA.

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**SECTION 19. Waiver of Jury Trial.**

TO THE EXTENT ENFORCEABLE AT SUCH TIME, GRANTOR AND SECURED PARTY HEREBY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

**SECTION 20. Dispute Resolution.**

Any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either party's performance or failure of performance under this Agreement that the parties have been unable to resolve by informal methods after undertaking a good faith effort to do so will be subject to the procedures for dispute resolution set forth in Article Eleven of the Power Purchase Agreement.

**SECTION 21. Counterparts.**

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page hereof by PDF or facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

**SECTION 22. Definitions.**

Each capitalized term utilized in this Agreement that is not defined in this Agreement, but that is defined in the UCC, including the categories of Collateral listed in Section 1 hereof, shall have the meaning set forth in Divisions 1, 8 or 9 of the UCC.

In addition, the following terms used in this Agreement shall have the following meanings:

“**Collateral**” has the meaning set forth in Section 1 hereof.

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**“Event of Default”** means any “Event of Default” as defined in the Power Purchase Agreement.

**“IP”** has the meaning set forth in Section 9.03 hereof.

**“Lender”** has the meaning ascribed to such term in the Power Purchase Agreement.

**“Permits”** has the meaning assigned to such term in the Power Purchase Agreement and shall include the permits set forth on Schedule 5.

**“Performance Assurance”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Permitted Liens”** has the meaning assigned to such term in the Power Purchase Agreement.

**“Person”** means any natural person, corporation, limited liability company, limited partnership, general partnership, limited liability partnership, joint venture, trust, land trust, business trust, or other organization, irrespective of whether such organization is a legal entity, and shall include a government and any agency or political subdivision thereof.

**“Power Purchase Agreement”** has the meaning set forth in the Preliminary Statements of this Agreement.

**“Secured Obligations”** has the meaning set forth in Section 2 hereof.

**“Subordination Agreement”** means that certain agreement between Secured Party, Grantor and Lender in the form and substance of Exhibit A, attached hereto and incorporated herein.

**“UCC”** means the Uniform Commercial Code, as it exists on the date of this Agreement or as it may hereafter be amended, in the State of California.

**“Unasserted Obligations”** means, at any time, obligations of the Grantor for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made (or, in the case of obligations for indemnification under this

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Agreement or the Power Purchase Agreement, no notice for indemnification has been issued by the applicable indemnitee) at such time.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized representatives as of the date first above written.

**SECURED PARTY:**

**SOUTHERN CALIFORNIA EDISON COMPANY,**

a California corporation

By: \_\_\_\_\_  
Name  
Title

**GRANTOR:**

**GOSHEN PHASE II LLC,**

a Delaware limited liability company

By: \_\_\_\_\_  
Name  
Title

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**EXHIBIT A**  
**TO**  
**FORM OF SECURITY AGREEMENT**

*Form of Subordination Agreement*

This SUBORDINATION AGREEMENT (as amended, modified or supplemented from time to time, this "Subordination Agreement"), dated as of \_\_\_\_\_, 20\_\_, is made and entered into by and among Southern California Edison Company, as subordinated secured party ("Subordinated Secured Party"), [\_\_\_\_\_], as agent ("Senior Secured Party") for the senior lenders described below ("Lenders"), and Goshen Phase II LLC, a Delaware limited liability company ("Borrower") (each of the foregoing referred to in this Subordination Agreement individually as a "Party" and jointly as "Parties").

RECITALS

A. Borrower has entered into that certain [*Insert description of financing arrangements with Lender*], by and between the Borrower, Senior Secured Party and the Lenders party thereto (as may be amended, modified or supplemented from time to time, the "Financing Agreement").

B. Borrower and Subordinated Secured Party have entered into that certain Security Agreement, dated as of \_\_\_\_\_, 2009 (as may be amended, modified or supplemented from time to time, the "Security Agreement"), wherein Borrower has granted to Subordinated Secured Party a security interest in certain collateral in order to secure certain obligations of Borrower under that certain Power Purchase and Sales Agreement, dated as of \_\_\_\_\_, 2008 by and between Borrower and Subordinated Secured Party (as may be amended, modified or supplemented from time to time, the "Power Purchase Agreement").

C. It is a requirement under the Financing Agreement that the Parties hereto shall have executed this Subordination Agreement.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

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ARTICLE I.  
DEFINITIONS

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Financing Agreement. In addition, the following terms have the meanings set forth below:

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

“Capital Stock” means (a) in the case of a corporation, corporate stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock, (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited) and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, the issuing Person.

“Cash Collateral” means any Collateral consisting of cash or cash equivalents, any security entitlement (as defined in the California Commercial Code) and any financial assets (as defined in the California Commercial Code).

“Collateral” means all assets and properties and all interests in assets or properties now owned or hereafter acquired by Borrower in or upon which a Lien is granted or purported to be granted under the Security Agreement or to secure the Senior Obligations and all products and proceeds of any of the foregoing. “Collateral” does not include any Development Security (as defined in the Power Purchase Agreement), Performance Assurance (as defined in the Power Purchase Agreement) in the form of cash, Letter of Credit (as defined in the Power Purchase Agreement), or proceeds from any Letter of Credit or Guaranty (as defined in the Power Purchase Agreement), or payments otherwise owed to Borrower but held by Subordinated Secured Party pursuant to its offset or other rights under the Power Purchase Agreement.

“Control Collateral” means any Collateral consisting of a certificated security (as defined in the California Commercial Code), investment property (as defined in the California Commercial Code), a deposit account (as defined in the California Commercial Code and any other Collateral as to which a Lien may be perfected through possession or control by the secured party, or any agent therefor.

“Discharge of Senior Obligations” means payment in full in cash of the Senior Obligations (other than Senior Obligations consisting of contingent indemnification obligations under the Financing Documents) including, with respect to amounts available to be drawn under outstanding letters of credit issued thereunder (or indemnities issued pursuant thereto in respect of outstanding letters of credit), delivery of cash collateral or backstop letters of credit in respect

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thereof in compliance with the terms of the Financing Agreement, in each case, after or concurrently with termination of all commitments to extend credit thereunder.

“Equity Interests” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

“Guarantor” means any Person that guarantees or pledges collateral to secure the Senior Obligations.

“Lien” means any interest in an asset securing an obligation owed to, or a claim by, any Person other than the owner of the asset, irrespective of whether (a) such interest is based on the common law, statute, or contract, (b) such interest is recorded or perfected, and (c) such interest is contingent upon the occurrence of some future event or events or the existence of some future circumstance or circumstances. Without limiting the generality of the foregoing, the term “Lien” includes the lien or security interest arising from a mortgage, deed of trust, encumbrance, pledge, hypothecation, assignment, deposit arrangement, security agreement, conditional sale or trust receipt, or from a lease, consignment, or bailment for security purposes and also includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases, and other title exceptions and encumbrances affecting Real Property.

“Lien Priority” means with respect to any Lien of the Senior Secured Party or the Subordinated Secured Party in the Collateral, the order of priority of such Lien as specified in Section 2.01.

“Person” means any natural person, corporation, limited liability company, limited partnership, general partnership, limited liability partnership, joint venture, trust, land trust, business trust, or other organization, irrespective of whether such organization is a legal entity, and shall include a government and any agency or political subdivision thereof.

“Proceeds” means (i) all proceeds (as defined in Article 9 of the California Commercial Code) with respect to the Collateral, and (ii) whatever is recoverable or recovered when Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily.

“Recovery” has the meaning set forth in Section 5.03.

“Senior Obligations” means, collectively, the obligations of the Borrower under the Financing Agreement and the other Financing Documents, including without limitation, the obligations to pay the principal of and interest on the Loans and all fees, indemnification payments and other amounts whatsoever, now or hereafter from time to time owing to the Senior Secured Party or the Lenders under the Financing Agreement, including all interest thereon and expenses related thereto, including any interest or expenses accruing or arising after the

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commencement of any case with respect to the Borrower under the United States Bankruptcy Code or any other bankruptcy or insolvency law (whether or not such interest or expenses are allowed or allowable as a claim in whole or in part in such case).

“Standstill Notice” means a written notice from or on behalf of the Senior Secured Party to the Subordinated Secured Party regarding the Collateral stating that an Event of Default has occurred under the Financing Agreement and stating that such written notice is a “Standstill Notice.”

“Standstill Period” has the meaning set forth in Section 2.03.

“Subordinated Obligations” means the obligations of Borrower to make monetary payments to Subordinated Secured Party under the Power Purchase Agreement.

“Subordinated Secured Party” means Subordinated Secured Party or any of its permitted assignees.

## ARTICLE II. SUBORDINATION

Section 2.01 Agreement to Subordinate. Notwithstanding the date, time, method, manner or order of grant, attachment, or perfection of any Liens granted to the Senior Secured Party or the Subordinated Secured Party in respect of all or any portion of the Collateral, or the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of the Senior Secured Party or the Subordinated Secured Party in any Collateral or any provision of the Uniform Commercial Code, any other applicable law, the Security Agreement, the Financing Documents or any other circumstance whatsoever:

(a) the Subordinated Secured Party hereby agrees that any Lien in respect of all or any portion of the Collateral now or hereafter held by or on behalf of the Subordinated Secured Party that secures all or any portion of the Subordinated Obligations, shall in all respects be junior and subordinate to all Liens granted to the Senior Secured Party in the Collateral to secure all or any portion of the Senior Obligations; and

(b) the Senior Secured Party hereby agrees that (i) any Lien in respect of all or any portion of the Collateral now or hereafter held by or on behalf of the Senior Secured Party that secures all or any portion of the Senior Obligations, shall in all respects be senior and prior to all Liens granted to the Subordinated Secured Party in the Collateral to secure all or any portion of the Subordinated Obligations;

The Subordinated Secured Party, acknowledges and agrees that, concurrently herewith, the Senior Secured Party has been granted Liens upon all of the Collateral in which the Subordinated Secured Party has been granted Liens and the Subordinated Secured Party hereby consents thereto. The Senior Secured Party acknowledges and agrees that the Subordinated

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Secured Party, for the benefit of itself, has been granted Liens upon all of the Collateral in which the Senior Secured Party has been granted Liens and the Senior Secured Party hereby consents thereto. The subordination of Liens in the Collateral by the Subordinated Secured Party in favor of the Senior Secured Party herein shall not be deemed to subordinate the Subordinated Secured Party's Liens to the Liens of any other Person.

Notwithstanding anything in this Subordination Agreement or the Security Agreement to the contrary, Senior Secured Party agrees that the Security Interest granted to Subordinated Secured Party in any Development Security, Performance Assurance or other cash collateral held by Subordinated Secured Party pursuant to the Power Purchase Agreement, is not subject to the terms of this Subordination Agreement. In the event of any conflict between this Subordination Agreement and the Power Purchase Agreement with respect to the foregoing, the Power Purchase Agreement shall control.

Section 2.02 Waiver of Right to Contest Liens. The Subordinated Secured Party agrees, and hereby waives any right to, that it shall not take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the Senior Secured Party in respect of the Collateral. Prior to Discharge of the Senior Obligations, the Subordinated Secured Party agrees that it will not take any action that would hinder any exercise of remedies undertaken by the Senior Secured Party under the Financing Documents with respect to Collateral, including any public or private sale, lease, exchange, transfer, or other disposition of the Collateral, whether by foreclosure or otherwise. Prior to Discharge of the Senior Obligations, the Subordinated Secured Party hereby waives any and all rights it may have as a junior lien creditor or otherwise to contest, protest, object to, interfere with the manner in which the Senior Secured Party seeks to enforce the Liens in any portion of the Collateral (it being understood and agreed that the terms of this Agreement shall govern with respect to such Collateral even if any portion of the Liens securing the Senior Obligations are avoided, disallowed, set aside, or otherwise invalidated in any judicial proceeding or otherwise). The Senior Secured Party agrees that it shall not (and hereby waives any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any Insolvency Proceeding), the validity, priority, enforceability, or perfection of the Liens of the Subordinated Secured Party in respect of the Collateral. Following the Discharge of the Senior Obligations, the Senior Secured Party agrees that it will not take any action that would hinder any exercise of remedies undertaken by the Subordinated Secured Party, including any public or private sale, lease, exchange, transfer, or other disposition of the Collateral, whether by foreclosure or otherwise.

Section 2.03 Remedies Standstill. Within ten (10) Business Days after the Senior Secured Party's receipt of a Notice from the Subordinated Secured Party declaring an Early Termination Date after taking into account the cure periods available under the Collateral Assignment Agreement (as each such term is defined in the Power Purchase Agreement) At any time after the occurrence and during the continuation of an Event of Default under any of the

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Financing Documents, the Senior Secured Party may send a Standstill Notice to the Subordinated Secured Party with respect to the Collateral.

(a) The Subordinated Secured Party agrees that from and after the date of its receipt of any Standstill Notice, it will not exercise any of its rights or remedies in respect of the collection on, set off against, marshalling of, or foreclosure on the Collateral or any other right relating to the Collateral under the Security Agreement, applicable law or otherwise as a secured creditor and will not take or receive any Collateral in connection with the exercise of any such right or remedy (including recoupment or set-off), whether under the Security Agreement or applicable law, in an Insolvency Proceeding or otherwise unless and until (i) the Senior Secured Party has expressly waived or acknowledged the cure of the applicable Event of Default in writing or the Discharge of the Senior Obligations shall have occurred, or (ii) ninety (90) days shall have elapsed from the date of the Subordinated Secured Party's receipt of such Standstill Notice, except with respect to any Collateral which the Senior Secured Party is pursuing its rights or remedies as a secured creditor to effect the collection, foreclosure, sale, or other realization upon or disposition of such Collateral (and as to such Collateral the Standstill Period shall continue until the Senior Secured Party completes such rights and remedies or gives a written notice to the Subordinated Secured Party as provided in clause (i), not to exceed one hundred eighty (180) days from the date of the Subordinated Secured Party's receipt of such Standstill Notice). If the Senior Secured Party is prohibited from exercising any remedies by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein during which the Subordinated Secured Party with respect to the Collateral is not permitted to exercise rights or remedies shall be extended for the period of such prohibition, so long as Senior Secured Party is diligently pursuing removal of such process, stay or injunction, The time period during which the Subordinated Secured Party with respect to the Collateral is not permitted to exercise rights or remedies under this Section 2.03 is referred to herein as the "Standstill Period." Upon the termination or expiration of a Standstill Period, the Subordinated Secured Party may commence to exercise any of its rights and remedies as a secured creditor under the Security Agreement, applicable law or otherwise (subject to the provisions of this Agreement, including Section 4.02 hereof and except with respect to any Collateral as to which the Senior Secured Party is effecting the collection, foreclosure, sale or other realization upon or disposition of). So long as the Senior Secured Party has not sent a Standstill Notice to the Subordinated Secured Party, the Subordinated Secured Party may exercise its rights or remedies in respect of the Collateral under the Security Agreement after the 10th Business Day following receipt by the Senior Secured Party of a Notice of Intent to Exercise (as defined below).

(b) If at any time other than during any Standstill Period an "Event of Default" (as defined in the Security Agreement) has occurred and is continuing under the Security Agreement, and the Subordinated Secured Party with respect to the Collateral intends to exercise its rights or remedies under the Security Agreement, the Subordinated Secured Party with respect to the Collateral may do so only after sending a written notice ("Notice of Intent to

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Exercise”) no less than ten (10) Business Days and no more than twenty (20) Business Days prior to the exercise of any such rights or remedies to the Senior Secured Party.

Section 2.04 Exercise of Rights.

(a) No Other Restrictions. Except as expressly set forth in this Agreement, each of the Subordinated Secured Party and the Senior Secured Party shall have any and all rights and remedies it may have as a creditor under applicable law, including the rights to exercise all rights and remedies in foreclosure or otherwise with respect to any of the Collateral; provided, however, that any such exercise, and any collection or sale of all or any portion of the Collateral, shall be subject to the prior Liens of the Senior Secured Party on the Collateral to the extent provided in Section 2.01 and to the provisions of this Agreement including Section 4.02 hereof. In exercising rights and remedies with respect to the Collateral, the Senior Secured Party may enforce the provisions of the Financing Documents and exercise remedies thereunder, all in such order and in such manner as it may determine in the exercise of its sole discretion. Such exercise and enforcement shall include the sale, lease, license, or other disposition of all or any portion of the Collateral by private or public sale or any other means permissible under applicable law; provided, that the Senior Secured Party agrees to provide copies of any notices that it is required under applicable law to deliver to the Borrowers to the Subordinated Secured Party; provided further, that the failure to provide any such copies to the Subordinated Secured Party shall not impair any of the Senior Secured Party’s rights hereunder.

(b) Release of Liens. In the event of any such private or public sale of any Collateral, Subordinated Secured Party agrees that such sale will be free and clear of the Liens securing the Subordinated Obligations and, if the sale or other disposition includes the Equity Interests in Borrower, agrees to release the entities whose Equity Interests are sold from all Subordinated Obligations so long as Senior Secured Party also releases the entities whose Equity Interests are sold from all Senior Obligations, in each case, so long as the proceeds from such sale or other disposition of the Collateral are applied in accordance with the terms of this Agreement. In furtherance thereof, Subordinated Secured Party agrees that it will execute any and all Lien releases or other documents reasonably requested by Senior Secured Party in connection therewith, so long as the proceeds from such sale or other disposition of the Collateral are applied in accordance with the terms of this Agreement.

(c) Subject to Section 3.01, the Subordinated Secured Party may exercise, and nothing herein shall constitute a waiver of, any right it may have at law or equity to receive notice of, or to commence or join with any creditor in commencing any Insolvency Proceeding or to join or participate in, any action or proceeding or other activity described in Section 3.01; provided, however, that exercise of any such right by the Subordinated Secured Party shall be subject to all of the terms and conditions of this Agreement, including the obligation to turn over all Collateral and Proceeds thereof to the Senior Secured Party for application to the Discharge of the Senior Obligations as provided in Section 4.02.

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(d) The Subordinated Secured Party may make such demands or file such claims in respect of the Subordinated Obligations as may be necessary to prevent the waiver or bar of such claims under applicable statutes of limitations or other statutes, court orders or rules of procedure, but except as provided in this Section 2.04, the Subordinated Secured Party shall not take any actions restricted by this Agreement until the Discharge of Senior Obligations shall have occurred.

(e) Following the Discharge of Senior Obligations, the other provisions of this Section 2.04 shall apply to the Subordinated Secured Party as if it was the Senior Secured Party and the Senior Secured Party was the Subordinated Secured Party, mutatis mutandis.

### ARTICLE III. ACTIONS OF THE PARTIES

Section 3.01 Limitation on Certain Actions. Notwithstanding any other provision hereof, during any Standstill Period prior to the date that the Discharge of Senior Obligations occurs, the Subordinated Secured Party will not:

- (a) commence receivership or foreclosure proceedings against Borrower, any Guarantor, or any Collateral;
- (b) sell, collect, transfer or dispose of any Collateral or Proceeds; or
- (c) notify third party account debtors to make payment directly to it or other Persons acting on its behalf.

Section 3.02 Perfection. Each of the Senior Secured Party and the Subordinated Secured Party, agree to hold all Control Collateral and Cash Collateral that is part of the Collateral in its respective possession, custody, or control (or in the possession, custody, or control of bailees for either, as applicable) as agent for the other solely for the purpose of perfecting the security interest granted to each in such Control Collateral or Cash Collateral subject to the terms and conditions of this Section 3.02. None of the Senior Secured Party or the Subordinated Secured Party, as applicable, shall have any obligation whatsoever to the other to assure that the Control Collateral is genuine or owned by Borrower, or any other Person or to preserve rights or benefits of any Person. The duties or responsibilities of the Senior Secured Party and the Subordinated Secured Party under this Section 3.02 are and shall be limited solely to holding or maintaining control of the Control Collateral and the Cash Collateral as agent for the other for purposes of perfecting the Lien held by the Subordinated Secured Party or the Senior Secured Party, as applicable. The Senior Secured Party is not and shall not be deemed to be a fiduciary of any kind for the Subordinated Secured Party or any other Person. The Subordinated Secured Party is not and shall not be deemed to be a fiduciary of any kind for the Senior Secured Party or any other Person. In the event that (a) the Subordinated Secured Party receives any Proceeds or Collateral in contravention of the Lien Priority, or (b) the Senior Secured Party receives any Proceeds or Collateral in contravention of the Lien Priority, it shall promptly pay over such Proceeds or Collateral to (i) in the case of clause (a), the Senior Secured Party, or (ii) in the case of clause (b),

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the Subordinated Secured Party, in the same form as received with any necessary endorsements, for application in accordance with the provisions of Section 4.02 of this Agreement.

ARTICLE IV.  
NOTICES AND APPLICATION OF PROCEEDS

Section 4.01 Notices of Exercise. Concurrently with any exercise by the Subordinated Secured Party of any of its rights and remedies under the Security Agreement following the occurrence of any default under the Security Agreement, the Subordinated Secured Party shall give notice of such exercise to the Senior Secured Party and shall only exercise such rights or remedies in a manner consistent with the terms of this Agreement. Concurrently with any exercise by the Senior Secured Party of any of its rights and remedies under the Financing Documents following the occurrence of any default under any of the Financing Documents, the Senior Secured Party shall give notice of such exercise to the Subordinated Secured Party and shall only exercise such rights or remedies in a manner consistent with the terms of this Agreement.

Section 4.02 Application of Proceeds.

(a) Turnover of Cash Collateral After Payment. Upon the Discharge of the Senior Obligations, the Senior Secured Party shall deliver to the Subordinated Secured Party or execute such documents as the Subordinated Secured Party may reasonably request to cause the Subordinated Secured Party to have control over any Cash Collateral or Control Collateral still in Senior Secured Party's possession, custody or control in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be applied by the Subordinated Secured Party to the Subordinated Obligations, if any. In the event that the Subordinated Obligations are paid in full and the Senior Obligations have not been, the Subordinated Secured Party shall deliver to the Senior Secured Party or execute such documents as the Senior Secured Party may reasonably request to cause the Senior Secured Party to have control over any Cash Collateral or Control Collateral still in Subordinated Secured Party's possession, custody or control in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct, to be applied by the Lenders to the Senior Obligations. Proceeds of any exercise by the Senior Secured Party or the Subordinated Secured Party, as applicable, of any of their respective secured creditor rights or remedies under any of the Security Agreement, under applicable law, or otherwise with respect to any Collateral or Proceeds thereof, shall be (a) until the Discharge of the Senior Obligations, retained by the Senior Secured Party or promptly turned over by the Subordinated Secured Party to the Senior Secured Party in the same form as received, with any necessary endorsements, and (b) after the Discharge of the Senior Obligations and until all Subordinated Obligations have been paid in full in cash, retained by the Subordinated Secured Party or promptly turned over by the Senior Secured Party to the Subordinated Secured Party in the same form as received, with any necessary endorsements.

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(b) Application of Proceeds. The Senior Secured Party and the Subordinated Secured Party hereby agree that all Collateral and all Proceeds received by either of them upon the exercise of any their secured creditor rights or remedies under any of the Financing Documents or Security Agreement, applicable law, or otherwise shall be applied,

first, to the payment of costs and expenses of the Senior Secured Party or of the Subordinated Secured Party, as applicable, in connection with such exercise,

second, to the payment of the Senior Obligations, and

third, to the payment of the Subordinated Obligations.

In exercising remedies, whether as a secured creditor or otherwise, the Senior Secured Party shall have no obligation or liability to the Subordinated Secured Party, and the Subordinated Secured Party shall have no obligation or liability to the Senior Secured Party regarding the adequacy of any Proceeds or for any action or omission save and except solely an action or omission that breaches the express obligations undertaken by each Party under the terms of this Agreement.

Section 4.03 Specific Performance. Each of the Senior Secured Party and the Subordinated Secured Party is hereby authorized to demand specific performance of this Agreement, whether or not Borrower shall have complied with any of the provisions of any of the Security Agreement or Financing Documents, at any time when the other shall have failed to comply with any of the provisions of this Agreement applicable to it; provided, however, the remedy of specific performance shall not be available, and the asserting party shall be free to assert any and all legal defenses it may possess, if such remedy would result in, or otherwise constitute, a violation of the Employee Retirement Income Security Act of 1974, as amended. Each of the Senior Secured Party and the Subordinated Secured Party hereby irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

## ARTICLE V. ACKNOWLEDGEMENTS AND WAIVERS

### Section 5.01 Notice of Acceptance and Other Waivers.

(a) All Senior Obligations at any time made or incurred by Borrower or any of its Subsidiaries shall be deemed to have been made or incurred in reliance upon this Agreement, and the Subordinated Secured Party hereby waives (i) notice of acceptance, or proof of reliance, by the Senior Secured Party of this Agreement, and (ii) notice of the existence, renewal, extension, accrual, creation, or non-payment of all or any part of the Senior Obligations. None of the Senior Secured Party, or any of its respective affiliates, directors, officers, or employees shall be liable for failure to demand, collect, or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral or to take any other action whatsoever with regard to the Collateral or any part thereof, except as specifically provided in this Agreement. The Senior Secured Party will be entitled to

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manage and supervise its loans and extensions of credit under the Financing Documents as the Senior Secured Party and may, in its sole discretion, deem appropriate, and the Senior Secured Party may manage its loans and extensions of credit without regard to any rights or interests that the Subordinated Secured Party may have in the Collateral or otherwise except as otherwise expressly set forth in this Agreement. The Subordinated Secured Party agrees that the Senior Secured Party shall not incur any liability as a result of a sale, lease, license, or other disposition of the Collateral, or any part thereof, pursuant to the Financing Documents conducted in accordance with mandatory provisions of applicable law.

(b) All Subordinated Obligations at any time made or incurred by Borrower shall be deemed to have been made or incurred in reliance upon this Agreement, and the Senior Secured Party hereby waives (i) notice of acceptance, or proof of reliance, by the Subordinated Secured Party, of this Agreement, and (ii) notice of the existence, renewal, extension, accrual, creation, or non-payment of all or any part of the Subordinated Obligations. None of Subordinated Secured Party nor any of its affiliates, directors, officers, employees, shall be liable for failure to demand, collect, or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral or to take any other action whatsoever with regard to the Collateral or any part thereof, except as specifically provided in this Agreement. If Subordinated Secured Party should take or fail to take any action under or exercise any of their contractual rights or remedies under the Security Agreement (subject to the express terms and conditions hereof), the Subordinated Secured Party shall not have any liability whatsoever to the Senior Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). The Subordinated Secured Party will be entitled to manage and supervise the Subordinated Obligations and its rights under the Security Agreement as it may, in its sole discretion, deem appropriate, and it may manage without regard to any rights or interests that the Senior Secured Party has in the Collateral or otherwise except as otherwise expressly set forth in this Agreement. Subject to Section 2.03, the Senior Secured Party agrees that the Subordinated Secured Party shall not incur any liability as a result of a sale, lease, license, or other disposition of the Collateral, or any part thereof, pursuant to the Security Agreement conducted in accordance with mandatory provisions of applicable law.

#### Section 5.02 Modifications to Financing Documents and Security Agreement.

(a) The Subordinated Secured Party hereby agrees that, without affecting the obligations of the Subordinated Secured Party hereunder, the Senior Secured Party may, at any time and from time to time, in its sole discretion without the consent of or notice to the Subordinated Secured Party (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the Subordinated Secured Party or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify the Financing Documents in any manner whatsoever, including, to

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- (i) change the manner, place, time, or terms of payment or renew or alter, all or any of the Senior Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Senior Obligations or any of the Financing Documents,
- (ii) retain or obtain a Lien on any property of any Person to secure any of the Senior Obligations, and in that connection to enter into any additional Financing Documents,
- (iii) amend, or grant any waiver, compromise or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Senior Obligations,
- (iv) release its Lien on any Collateral or other property,
- (v) exercise or refrain from exercising any rights against Borrower or any other Person,
- (vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the Senior Obligations, and
- (vii) otherwise manage and supervise the Senior Obligations as the Senior Secured Party shall deem appropriate.

(b) The Senior Secured Party hereby agrees that Subordinated Secured Party may, at any time and from time to time, in its sole discretion without the consent of or notice to the Senior Secured Party (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the Senior Secured Party, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify the Security Agreement, provided that no such amendment, restatement, supplement, replacement, refinancing, extension, consolidation, restructuring or modification shall modify, impair or release the subordination provided for in this Agreement.

#### Section 5.03 Reinstatement and Continuation of Agreement.

(a) If the Senior Secured Party or any Lender is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of Borrower, any of its Subsidiaries or any other Person any amount (a "Recovery"), then the Senior Obligations shall be reinstated to the extent of such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement. All rights, interests, agreements, and obligations of the Subordinated Secured Party, and the Senior Secured Party under this Agreement shall remain in full force and effect and shall continue irrespective of the commencement of, or any discharge, confirmation, conversion, or dismissal of any Insolvency

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Proceeding by or against Borrower, any of its Subsidiaries or any other circumstance which otherwise might constitute a defense available to, or a discharge of Borrower, or any Subsidiary in respect of the Senior Obligations. No priority or right of the Senior Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of Borrower, any of its Subsidiaries or by the noncompliance by any Person with the terms, provisions, or covenants of the Financing Documents or Security Agreement, regardless of any knowledge thereof which the Senior Secured Party may have.

(b) If Subordinated Secured Party is required in any Insolvency Proceeding or otherwise to turn over or otherwise pay to the estate of Borrower, any of its Subsidiaries or any other Person a Recovery, then the Subordinated Obligations shall be reinstated to the extent of such Recovery. No priority or right of the Subordinated Secured Party shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of Borrower, or any of its Subsidiaries or by the noncompliance by any Person with the terms, provisions, or covenants of the Financing Documents or Security Agreement, regardless of any knowledge thereof which the Subordinated Secured Party may have.

## ARTICLE VI. INSOLVENCY PROCEEDINGS

Section 6.01 No Contest. The Subordinated Secured Party agrees that, prior to the Discharge of Senior Obligations, it shall not contest (or support any other Person contesting) (a) any request by the Senior Secured Party for adequate protection, or (b) any objection by the Senior Secured Party to any motion, relief, action, or proceeding based on Senior Secured Party claiming that their interests in the Collateral are not adequately protected or any other similar request under any law applicable to an Insolvency Proceeding. Notwithstanding the foregoing, in any Insolvency Proceeding, if the Senior Secured Party is granted adequate protection in the form of additional collateral in connection with any use of cash collateral under Section 363 or Section 364 of Title 11 of the United States Code or any similar provision under the law applicable to any Insolvency Proceeding, then the Subordinated Secured Party may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien hereby is and shall be deemed to be subordinated to the Liens securing the Senior Obligations. The Senior Secured Party agrees that until the Subordinated Obligations are paid in full in cash, none of them shall contest (or support any other Person contesting) (a) any request by the Subordinated Secured Party for adequate protection in the Collateral, or (b) any objection by the Subordinated Secured Party to any motion, relief, action, or proceeding based on Subordinated Secured Party claiming that its interests in the Collateral are not adequately protected or any other similar request under any law applicable to an Insolvency Proceeding, but only to the extent that such request is consistent with and subject to the other provisions of this Subordination Agreement, including Sections 2.01 and 6.01. In the event the Subordinated Secured Party seeks or requests adequate protection and such adequate protection is granted in the form of Liens in respect of additional collateral, then the Subordinated Secured Party agrees that the Senior Secured Party shall also be granted a senior Lien on such additional collateral as security for the Senior Obligations and that any Lien on such additional collateral securing the Subordinated Obligations shall be subordinated to the Liens in

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respect of such additional collateral securing the Senior Obligations and subject to the other terms and conditions of this Agreement. Nothing contained herein shall prohibit or in any way limit the Senior Secured Party, prior to the Discharge of Senior Obligations, from objecting in any Insolvency Proceeding or otherwise to any action taken by the Subordinated Secured Party, including the seeking by the Subordinated Secured Party of adequate protection or the asserting by the Subordinated Secured Party of any of its rights and remedies under the Security Agreement.

Section 6.02 Asset Sales. The Subordinated Secured Party agrees that prior to the Discharge of Senior Obligations, it will not oppose any sale consented to by Senior Secured Party of any Collateral pursuant to Section 365(f) of Title 11 of the United States Code (or any similar provision in any other applicable Bankruptcy Law) so long as the proceeds of such sale are applied in accordance with this Agreement.

Section 6.03 Enforceability. The provisions of this Agreement are intended to be and shall be enforceable under Section 510 of Title 11 of the United States Code. The Subordinated Secured Party agrees that all distributions that the Subordinated Secured Party receives in any Insolvency Proceeding on account of the Collateral or Proceeds thereof shall be held in trust by such Person and turned over to the Senior Secured Party for application in accordance with Section 4.02 of this Agreement. The Senior Secured Party agrees that all distributions that the Senior Secured Party receives in any Insolvency Proceeding on account of the Collateral or Proceeds thereof shall be held in trust by such Person and turned over to the Subordinated Secured Party for application in accordance with Section 4.02 of this Agreement. To the extent that any amounts received by any Person are paid over in connection with this provision, the obligations owed by Borrower to such Person will be deemed to be reinstated to the extent of the amounts so paid over.

## ARTICLE VII. MISCELLANEOUS

Section 7.01 Rights of Subrogation. The Subordinated Secured Party agrees that no payment or distribution to the Senior Secured Party on account of Collateral or Proceeds thereof pursuant to the provisions of this Agreement shall entitle the Subordinated Secured Party to exercise any rights of subrogation in respect thereof until the Discharge of Senior Obligations shall have occurred. Following the Discharge of Senior Obligations, the Senior Secured Party agrees to execute such documents, agreements, and instruments as the Subordinated Secured Party may reasonably request to evidence the transfer by subrogation to any such Person of an interest in the Senior Obligations resulting from payments or distributions to the Senior Secured Party on account of the Collateral or Proceeds thereof by such Person, so long as all costs and expenses (including all reasonable legal fees and disbursements) incurred in connection therewith by the Senior Secured Party are paid by such Person upon request for payment thereof.

Section 7.02 Further Assurances. Each Party will, at its own expense (but subject to such Party's reimbursement rights under the Financing Documents or Security Agreement, as applicable) and at any time and from time to time, promptly execute and deliver all further

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instruments and documents, and take all further action, that may be necessary or desirable, or that either Party may reasonably request, in order to protect any right or interest granted or purported to be granted hereby or to enable the Senior Secured Party or the Subordinated Secured Party to exercise and enforce its rights and remedies hereunder; provided, however, that no Party shall be required to pay over any payment or distribution, execute any instruments or documents, or take any other action referred to in this Section 7.02 to the extent that such action would contravene any law, order or other legal requirement, and in the event of a controversy or dispute, such Party may interplead any payment or distribution in any court of competent jurisdiction, without further responsibility in respect of such payment or distribution under this Section 7.02.

Section 7.03 Representations. The Senior Secured Party represents and warrants to the Subordinated Secured Party that it has the requisite power and authority under the Financing Agreement to enter into, execute, deliver, and carry out the terms of this Agreement. The Subordinated Secured Party represents and warrants that it has the requisite power and authority under the Security Agreement to enter into, execute, deliver, and carry out the terms of this Agreement.

Section 7.04 Amendments. No amendment or waiver of any provision of this Agreement nor consent to any departure by any Party hereto shall be effective unless it is in a written agreement executed by the Subordinated Secured Party and the Senior Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 7.05 Addresses for Notices. All demands, notices and other communications provided for hereunder shall be in writing and, if to the Subordinated Secured Party, mailed or sent by telecopy or delivered to it, addressed to it as follows:

Southern California Edison Company

[Insert Address]

Attention:

Telephone:

Facsimile:

and if to the Senior Secured Party, mailed, sent or delivered thereto, addressed to it as follows:

[Insert Senior Secured Party Name]

[Insert Address]

Attention:

Facsimile:

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[With a copy to:]

or as to any party at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 7.05. All such demands, notices and other communications shall be effective, when mailed, two business days after deposit in the mails, postage prepaid, when sent by telecopy, when receipt is acknowledged by the receiving telecopy equipment (or at the opening of the next business day if receipt is after normal business hours), or when delivered, as the case may be, addressed as aforesaid.

Section 7.06 No Waiver, Remedies. No failure on the part of any Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 7.07 Continuing Agreement, Transfer of Priority Obligations. This Agreement is a continuing agreement and shall (i) remain in full force and effect until the Discharge of the Senior Obligations shall have occurred and the Subordinated Obligations shall have been paid in full, (ii) be binding upon the Parties and their successors and assigns, and (iii) inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), the Senior Secured Party or the Subordinated Secured Party may assign or otherwise transfer all or any portion of the Senior Obligations or the Subordinated Obligations, as applicable, to any other Person (other than Borrower, any Guarantor or any Affiliate of Borrower and any Subsidiary of Borrower or any Guarantor), provided that this Agreement shall be assigned by such party together with the Senior Obligations or Subordinated Obligations, as applicable, and such other Person shall thereupon become vested with all the rights and obligations in respect thereof granted to the Senior Secured Party or the Subordinated Secured Party, as the case may be, herein or otherwise.

Section 7.08 Governing Law: Entire Agreement. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and to be performed in the State of California, including, without limitation, Section 1646.5 of the Civil Code of the State of California. This Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter hereof and supersedes any prior agreements, written or oral, with respect thereto.

Section 7.09 Counterparts. This Agreement maybe executed in any number of counterparts (including via facsimile or electronic mail), and it is not necessary that the signatures of all Parties be contained on any one counterpart hereof, each counterpart will be deemed to be an original, and all together shall constitute one and the same document.

Section 7.10 No Third Party Beneficiary. This Agreement is solely for the benefit of the Parties (and their permitted assignees). No other Person (including Borrower, or any Affiliate

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of Borrower and any Subsidiary of Borrower) shall be deemed to be a third party beneficiary of this Agreement.

Section 7.11 Headings. The headings of the articles and sections of this Agreement are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof

Section 7.12 Severability. If any of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and shall not invalidate the Lien Priority or any other priority set forth in this Agreement.

Section 7.13 Subordinated Secured Party Status. Nothing in this Agreement shall be construed to operate as a waiver by the Subordinated Secured Party, with respect to Borrower, of the benefit of any exculpatory rights, privileges, immunities, indemnities, or reliance rights contained in the Security Agreement. For all purposes of this Agreement, the Subordinated Secured Party may (a) rely in good faith, as to matters of fact, on any representation of fact believed by the Subordinated Secured Party to be true (without any duty of investigation) and that is contained in a written certificate of any authorized representative of the Borrower or of the Senior Secured Party, and (b) assume in good faith (without any duty of investigation), and rely upon, the genuineness, due authority, validity, and accuracy of any certificate, instrument, notice, or other document believed by it in good faith to be genuine and presented by the proper person. Each of Borrower and Senior Secured Party expressly acknowledge that the subordination and related agreements set forth herein by the Subordinated Secured Party are made solely in its capacity as Subordinated Secured Party under the Security Agreement and are not made by the Subordinated Secured Party in its individual commercial capacity.

Section 7.14 Acknowledgment. Borrower hereby acknowledges that it has received a copy of this Agreement and consents thereto, and agrees to recognize all rights granted thereby to the Senior Secured Party and the Subordinated Secured Party and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement. Borrower further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under this Agreement.

Section 7.15 VENUE; JURY TRIAL WAIVER.

(a) ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST GRANTOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OBLIGATIONS HEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT SENIOR SECURED PARTY'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SENIOR SECURED PARTY ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HERETO

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WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 7.15.

(b) EACH PARTY HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 7.16 Intercreditor Agreement. This Agreement is the Subordination Agreement referred to in the Security Agreement. If this Agreement or all or any portion of either Party's rights or obligations hereunder are assigned or otherwise transferred to any other Person, such other Person shall execute and deliver an agreement containing terms substantially identical to those contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

**SUBORDINATED SECURED PARTY:**

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

By: \_\_\_\_\_  
Name  
Title

**BORROWER:**

**GOSHEN PHASE II LLC,**  
a Delaware limited liability company

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By: \_\_\_\_\_  
Name  
Title

**SECURITY AGENT:**

**[INSERT LENDER NAME]**, as Security Agent

By: \_\_\_\_\_  
Name  
Title

**ADMINISTRATIVE AGENT:**

**[INSERT ADMINISTRATIVE AGENT NAME]**, as  
Administrative Agent

By: \_\_\_\_\_  
Name  
Title

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**SCHEDULE 1**  
**TO**  
**SECURITY AGREEMENT**

**Type and Jurisdiction of Organization**

<b><u>Name of Grantor</u></b>	<b><u>Type of Organization</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Organization Number</u></b>
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**SCHEDULE 2  
TO  
SECURITY AGREEMENT**

**Other Names**

**Name of Grantor**

**Other Names**

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**SCHEDULE 3**  
**TO**  
**SECURITY AGREEMENT**

**Commercial Tort Claims**

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**SCHEDULE 4**  
**TO**  
**SECURITY AGREEMENT**

**Intellectual Property**

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**SCHEDULE 5**  
**TO**  
**SECURITY AGREEMENT**

**Permits**

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**EXHIBIT V-2**

[Intentionally Deleted.]

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

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**EXHIBIT W**

*Form of Consent to Collateral Assignment Agreement*

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## EXHIBIT W

### *Form of Consent to Collateral Assignment Agreement*

This CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20 \_\_, is by and among (i) Southern California Edison Company, a California corporation (“SCE”), (ii) \_\_\_\_\_, a \_\_\_\_\_ (the “Project Company”), (iii) \_\_\_\_\_, a \_\_\_\_\_, as security agent for the secured parties under the Financing Agreement referred to below (such secured parties together with their successors in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Security Agent”), and (iv) \_\_\_\_\_, as administrative agent for the lenders under the Financing Agreement referred to below (together with its successors in such capacity, the “Administrative Agent”).

### RECITALS

A. Project Company and SCE have entered into that certain Renewable Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 20\_\_ (“Power Purchase Agreement”), pursuant to which Project Company will develop, procure, construct, commission and test a renewable power generating facility (the “Project”) and sell the Product (as defined in the Power Purchase Agreement) to SCE, and SCE will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the Power Purchase Agreement, Project Company has agreed to provide to SCE certain collateral, which may including Development Security, Performance Assurance or Secured Interests (the “PPA Collateral”) and to grant SCE a subordinate lien on the Project (a “Junior Lien”);

C. Project Company has entered into that certain [*Insert description of financing arrangements with Lender*], dated as of \_\_\_\_\_, 20\_\_, among Project Company, the Lenders party thereto, the Administrative Agent and the Security Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the Power Purchase Agreement and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Security Agent pursuant to the Financing Agreement; and

E. It is a requirement under the Financing Agreement and the Power Purchase Agreement that SCE and the other parties hereto shall have executed and delivered this Consent;

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## AGREEMENT

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

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

#### 1.1 Consent and Agreement. SCE:

(a) hereby acknowledges notice of and consents to the assignment as collateral security to Security Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) hereby acknowledges the right (but not the obligation) of Security Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the Power Purchase Agreement (subject to SCE's defenses under the Power Purchase Agreement) and accepts any such exercise; provided, however, that, insofar as the Security Agent exercises any of its rights under the Power Purchase Agreement or makes any claims with respect to payments or other obligations under the Power Purchase Agreement, the terms and conditions of the Power Purchase Agreement applicable to such exercise of rights or claims shall apply to Security Agent to the same extent as to Project Company.

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

1.3 Substitute Owner. Subject to Section 1.8, the parties agree that if Security Agent notifies (such notice, a "Default Notice") SCE that an event of default has occurred and is continuing under the Financing Documents ("Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following an Event of Default, Security Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the Power Purchase Agreement, and, subject to Section 1.8(b) below, SCE and Substitute Owner will recognize each other as counterparties under the Power Purchase Agreement and will continue to perform their respective obligations under the Power Purchase Agreement in favor of each other in accordance with the terms thereof; provided, however, that the Substitute Owner shall have financial qualifications and operating experience as set forth in Section 10.04(b)(i)-(iii) of the Power Purchase Agreement. For purposes of the foregoing, SCE shall be entitled to assume that any such purported exercise is in accordance with the Financing Documents without independent investigation thereof.

1.4 Right to Cure. If Project Company defaults in the performance of any of its obligations under the Power Purchase Agreement, or upon the occurrence or non-occurrence of

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any event or condition under the Power Purchase Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable SCE to terminate or suspend its performance under the Power Purchase Agreement (a “Power Purchase Agreement Default”), SCE will not terminate or suspend its performance under the Power Purchase Agreement until it first gives written notice of such default to Security Agent and Administrative Agent and affords Security Agent the right to cure such Power Purchase Agreement Default within the applicable cure period under the Power Purchase Agreement. In addition, if Security Agent gives SCE written notice prior to the expiration of the applicable cure period under the Power Purchase Agreement of Security Agent’s intention to cure such Power Purchase Agreement Default (which notice shall include a reasonable description of the time required to cure such Power Purchase Agreement Default) and is diligently proceeding to cure such Power Purchase Agreement Default, Security Agent shall have a period of sixty(60) days (or, if such Power Purchase Agreement Default is for failure by the Project Company to pay an amount to SCE which is due and payable under the Power Purchase Agreement other than to provide PPA Collateral, thirty (30) days) from receipt of the notice of such Power Purchase Agreement Default from SCE to cure such Power Purchase Agreement Default, provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary Power Purchase Agreement Default and Security Agent has commenced foreclosure proceedings within sixty (60) days after notice of the Power Purchase Agreement Default and is diligently pursuing such foreclosure proceedings, Security Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days, to complete such proceedings and cure such Power Purchase Agreement Default, (b) if Security Agent is prohibited from curing any such Power Purchase Agreement Default by any process, stay or injunction issued by any Governmental Authority (as defined in the Power Purchase Agreement) or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a Power Purchase Agreement Default shall be extended for the period of such prohibition, so long as Security Agent is diligently pursuing removal of such process, stay or injunction, and (c) in the case of Project Owner’s failure to provide PPA Collateral, Security Agent shall cure such Power Purchase Agreement Default by providing the PPA Collateral required to be provided on the cure date set forth in the Power Purchase Agreement. Security Agent shall provide SCE with reports concerning the status of efforts to cure a Power Purchase Agreement Default upon SCE’s reasonable request. With respect to a Power Purchase Agreement Default pursuant to Section 6.01(c)(xv) of the Power Purchase Agreement, Security Agent shall have the periods specified in clauses (a) and (b) above to effect a foreclosure on the Generating Facility as a cure; and such Power Purchase Agreement Default shall be deemed cured upon the indebtedness referenced in such section no longer being immediately due and payable (whether by waiver by Lenders, payment of such indebtedness or foreclosure by Security Agent).

1.5 No Amendments. To the extent permitted by applicable law, SCE agrees that it will not, without the prior written consent of Administrative Agent (a) enter into any material supplement, restatement, extension, amendment or modification of the Power Purchase Agreement, (b) enter into any novation of the Power Purchase Agreement with any natural person, corporation, trust, business trust, joint venture, joint stock company, association,

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company, limited liability company, partnership, Governmental Authority or other entity (a “Person”), (c) terminate, suspend or cancel its performance under the Power Purchase Agreement (except in accordance with Section 1.4) or (d) consent to or accept any termination or cancellation of the Power Purchase Agreement by Project Company.

1.6 Replacement Agreements. If the Power Purchase Agreement is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Security Agent or its designee (“Replacement Owner”) directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), SCE shall, and Security Agent shall cause Replacement Owner to, enter into a new agreement for the balance of the obligations under the Power Purchase Agreement remaining to be performed with Replacement Owner having terms substantially the same as the terms of the Power Purchase Agreement with respect to the remaining Term (“Replacement Power Purchase Agreement”). Notwithstanding the execution and delivery of a Replacement Power Purchase Agreement, to the extent SCE is, or was otherwise prior to its termination as described in this Section 1.6, entitled under the Power Purchase Agreement, SCE may suspend performance of its obligations under such Replacement Power Purchase Agreement, unless and until all Power Purchase Agreement Defaults (other than nondurable defaults that are specific to Project Company) of Project Company under the Power Purchase Agreement or Replacement Power Purchase Agreement have been cured.

1.7 Transfer. Subject to Section 1.8(a), Security Agent shall have the right to assign all of the Assigned Interest or all of its interest in a Replacement Power Purchase Agreement to a Person to whom the Project is transferred, provided, however, that the proposed transferee shall have financial qualifications and operating experience as set forth in Section 10.04(b)(i)-(iii) of the Power Purchase Agreement.

1.8 Assumption of Obligations.

(a) Transferee. Any transferee under Section 1.7 shall expressly assume in a writing reasonably satisfactory to SCE all of the obligations of Project Company or Security Agent under the Power Purchase Agreement or Replacement Power Purchase Agreement, including posting and collateral assignment of the PPA Collateral. Upon such assignment, the cure of any outstanding Power Purchase Agreement Defaults for payment, and payment of all other amounts due and payable to SCE in respect of the Power Purchase Agreement or a Replacement Power Purchase Agreement, Security Agent shall be released from any further liability under the Power Purchase Agreement or Replacement Power Purchase Agreement.

(b) Substitute Owner. Subject to Section 1.8(c), any Substitute Owner pursuant to Section 1.3 shall be required to perform Project Companies’ obligations under the Power Purchase Agreement, including posting and collateral assignment of the PPA Collateral; provided, that, (i) the obligations of such Substitute Owner shall be no more than those of Project Company under the Power Purchase Agreement, and (ii) such Substitute Owner shall not be required to perform or be subject to any defenses or offsets by reason of any of Project

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Company's obligations under the Power Purchase Agreement that were unperformed at the time such Substitute Owner became a Substitute Owner (other than any obligations, defenses or offsets related to failure to pay amounts owed under the Power Purchase Agreement) and provided that the foregoing shall not relieve the Substitute Owner from performing obligations under the Power Purchase Agreement from the date of becoming a party to the Power Purchase Agreement or the Replacement Power Purchase Agreement..

(c) No Liability. SCE acknowledges and agrees that neither Security Agent, Administrative Agent nor any Secured Party shall have any liability or obligation under the Power Purchase Agreement as a result of this Consent nor shall Security Agent, Administrative Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the Power Purchase Agreement, except as provided in Section 1.8(b), or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Security Agent becomes a Substitute Owner pursuant to Section 1.3 or enters into a Replacement Power Purchase Agreement, Security Agent shall not have any personal liability to SCE under the Power Purchase Agreement or Replacement Power Purchase Agreement and the sole recourse of SCE in seeking enforcement of such obligations against Security Agent shall be to the aggregate interest of the Secured Parties in the Project, provided, however, that such limited recourse shall not limit SCE's right to seek equitable or injunctive relief against Security Agent, or SCE's rights with respect to any offset rights expressly allowed under the Power Purchase Agreement or the PPA Collateral.

1.9 Delivery of Notices. SCE shall deliver to Security Agent and Administrative Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by SCE to Project Company pursuant to the Power Purchase Agreement relating to (a) a Power Purchase Agreement Default by Project Company under the Power Purchase Agreement, (b) any claim regarding Force Majeure by SCE under the Power Purchase Agreement, (c) any notice of dispute under the Power Purchase Agreement, (d) any notice of intent to terminate or any termination notice and (e) any matter that would require the consent of Security Agent, Administrative Agent or the Lenders pursuant to Section 1.5 or any other provision of this Consent. Security Agent and Administrative Agent acknowledge that delivery of such notice, request and demand shall satisfy SCE's obligation to give Security Agent and Administrative Agent a notice of Power Purchase Agreement Default under Section 1.4. Security Agent and Administrative Agent shall deliver to SCE, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Security Agent and Administrative Agent to Project Company pursuant to the Financing Documents relating to a Power Purchase Agreement Default by Project Company under the Financing Documents.

1.10 Confirmations. SCE will, as and when reasonably requested by Security Agent from time to time, confirm in writing matters relating to the Power Purchase Agreement (including the performance of same by Project Company), but without prejudice to any rights of SCE under the Power Purchase Agreement as between SCE and Project Company.

1.11 Exclusivity of Dealings. Except as provided in Sections 1.4, 1.5, 1.9, 1.10 and 2.1, unless and until SCE receives a Default Notice, SCE shall deal exclusively with Project

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Company in connection with the performance of SCE's obligations under the Power Purchase Agreement. From and after such time as SCE receives a Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.3 or the Power Purchase Agreement is transferred to a Person to whom the Project is transferred pursuant to Section 1.8, SCE shall, until Security Agent confirms to SCE in writing that all obligation under the Financing Documents are no longer outstanding, deal exclusively with Security Agent in connection with the performance of SCE's obligations under the Power Purchase Agreement, and SCE may irrevocably rely on instructions provided by Security Agent in accordance therewith to the exclusion of those provided by any other Person.

## SECTION 2. PAYMENTS UNDER THE POWER PURCHASE AGREEMENT

2.1 Payments. [Unless and until SCE receives written notice to the contrary from Security Agent, SCE will make all payments to be made by it to Project Company under or by reason of the Power Purchase Agreement directly to Project Company.][*Note: financing may require all payments to be made to the Security Agent*] SCE, Project Company, and Security Agent acknowledge that SCE will be deemed to be in compliance with the payment terms of the Power Purchase Agreement to the extent that SCE makes payments in accordance with Security Agent's instructions.

2.2 No Offset, Etc. All payments required to be made by SCE under the Power Purchase Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the Power Purchase Agreement.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF SCE

SCE makes the following representations and warranties as of the date hereof in favor of Security Agent.

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

3.2 Authorization. The execution, delivery and performance by SCE of this Consent and the Power Purchase Agreement have been duly authorized by all necessary corporate or other action on the part of SCE and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of SCE which, if not obtained, will prevent SCE from performing its obligations hereunder or under the Power Purchase

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Agreement except approvals or consents which have previously been obtained and which are in full force and effect.

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

3.4 Approvals. Except as provided in any of the Power Purchase Agreement, no consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any Person, board or body, public or private (collectively, the "Approvals"), is required to be obtained by SCE in connection with the execution, delivery or performance of the Power Purchase Agreement or the consummation of the transactions contemplated thereunder, which, if not obtained, will prevent SCE from performing its obligations hereunder or under the Power Purchase Agreement, except those that have been validly issued and are in full force and effect, and those which have been or will be duly applied for in the ordinary course.

3.5 Litigation, Etc. There is no litigation, action, suit, proceeding or investigation pending or, to SCE's knowledge, threatened against SCE before or by any court, administrative agency, arbitrator or Governmental Authority, which, if adversely determined, individually or in the aggregate, (a) could reasonably be expected to modify or otherwise adversely affect the Approvals, or (b) questions the validity, binding effect or enforceability hereof or of the Power Purchase Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

3.6 Compliance with Other Instruments, Etc. The execution, delivery and performance by SCE of this Consent and the Power Purchase Agreement and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any material contract or agreement to which it is a party or by which it or its property is bound, or of any material license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to it.

3.7 No Default or Amendment. Neither SCE nor, to SCE's knowledge, Project Company, is in default of any of its obligations under the Power Purchase Agreement. SCE and, to SCE's knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the Power Purchase Agreement (except as disclosed to Security Agent). To SCE's knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SCE or Project Company to terminate or suspend its obligations under the Power

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Purchase Agreement. The Power Purchase Agreement has not been amended, modified or supplemented in any manner except as set forth in the recitals hereto.

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

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

Project Company makes the following representations and warranties as of the date hereof in favor of the Security agent and SCE.

4.1 No Default or Amendment. Neither Project Company nor, to Project Company's knowledge, SCE, is in default of any of its obligations thereunder. Project Company and, to Project Company's knowledge, SCE, has complied with all conditions precedent to the effectiveness of its obligations under the Power Purchase Agreement (except as disclosed to Security Agent). To Project Company's knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SCE or Project Company to terminate or suspend its obligations under the Power Purchase Agreement. The Power Purchase Agreement has not been amended, modified or supplemented in any manner except as set forth in the recitals hereto.

4.2 No Previous Assignments. Project Company has not previously assigned all or any part of its rights under the Power Purchase Agreement.

#### SECTION 5. MISCELLANEOUS

5.1 Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the Power Purchase Agreement (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to SCE or Project Company, in accordance with Section 10.07 of the Power Purchase Agreement, if to Security Agent, to [INSERT LENDER NAME], [INSERT LENDER ADDRESS], Attn: [INSERT CONTACT INFORMATION], Telephone: [\_\_\_], Telecopy: [\_\_\_], (c) if to Administrative Agent, to [INSERT ADMINISTRATIVE AGENT NAME], [INSERT ADDRESS], Attn: [INSERT CONTACT INFORMATION], Telephone: [\_\_\_], Fax: [\_\_\_] and (d) to such other address or addressee as any such party may designate by notice given pursuant hereto.

5.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF

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LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the Power Purchase Agreement. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 5.1 hereof. Each party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any party to serve process in any other manner permitted by law.

5.3 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

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

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

5.6 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by SCE, Administrative Agent and Security Agent.

5.7 Termination. Each party's obligations hereunder are absolute and unconditional, and no party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until SCE has been notified by Security Agent that all of the obligations under the Financing Documents shall have been satisfied in full or, with respect to any Replacement Power Purchase Agreement, its obligations under such Replacement Power Purchase Agreement have been fully performed.

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5.8 Successors and Assigns. This Consent shall be binding upon each party and its permitted successors and assigns and shall inure to the benefit of the other parties, their respective designee(s) and assignee(s) and their respective successors and assigns, through a refinancing of the Project or otherwise. Each reference to a Person herein shall include such Person's permitted successors, designees and assigns.

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

5.10 Waiver of Trial by Jury. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

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

5.12 Defined Terms. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the Power Purchase Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

[Signature page follows]

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



**SCE:**

**SOUTHERN CALIFORNIA EDISON  
COMPANY,**

a California corporation

By: \_\_\_\_\_

Name:

Title:

**PROJECT COMPANY:**

**GOSHEN PHASE II LLC,**

a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

**SECURITY AGENT:**

**[INSERT LENDER NAME],** as Security Agent

By: \_\_\_\_\_

Name:

Title:

**ADMINISTRATIVE AGENT:**

**[INSERT ADMINISTRATIVE AGENT  
NAME],** as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

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

**SCHEDULE A**  
**TO**  
**CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT**

*Account for Payments*

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\*\*\* End of EXHIBIT W\*\*\*

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

EXHIBIT X

[Intentionally Deleted.]

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\*\*\* *End of EXHIBIT X*\*\*\*

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

**EXHIBIT Y**

*Interconnection Certificate*

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

**EXHIBIT Y**

*Interconnection Certificate*

Renewable and Alternative Power  
Southern California Edison Company  
2244 Walnut Grove Ave  
Rosemead CA 91770  
Attention:

TO: Southern California Edison Company (“SCE”)

RE: Renewable and Power Purchase Agreement by and between SCE and *[Insert Name of Seller]* dated *[Date]* (the “Power Purchase Agreement”)

The undersigned hereby represents and warrants to SCE as of *[Execution Date]* that:

- (1) The *[Insert Name of Transmission Provider]* is the Transmission Provider under Interconnection Agreement as defined in the Power Purchase Agreement and attached to this Interconnection Certificate as Attachment K-1;
- (2) The Interconnection Agreement has been fully executed by *[Insert Name of Seller or Insert Name of Seller’s Affiliate(s)]* and the Transmission Provider.
- (3) No other interconnection agreements are necessary to fully interconnect the Generating Facility to the Transmission Provider’s Grid.
- (4) There is no pending litigation or action, or, to the best knowledge of the undersigned, no threatened litigation or actions, with respect to the Interconnection Agreement attached to this Interconnection Certificate as Attachment K-1.
- (5) There are no unpaid or anticipated judgments with respect to the Interconnection Agreement attached to this Interconnection Certificate as Attachment K-1 against *[Insert Name of Seller or Insert Name of Seller’s Affiliate(s)]* under such Interconnection Agreement.

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\*\*\* End of EXHIBIT Y \*\*\*

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

**AMENDMENT NO. 1**

To The

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT)**

Between

**SOUTHERN CALIFORNIA EDISON COMPANY**

And

**GOSHEN PHASE II, LLC**

RAP ID #6334

This Amendment No. 1 ("Amendment No. 1") to the Agreement (as that term is defined below) is entered into between Southern California Edison Company, a California corporation ("SCE"), and Goshen Phase II, LLC, a Delaware limited liability company ("Seller"). SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used and not otherwise defined in this Amendment No. 1 shall have the meanings ascribed to such terms in the Agreement (as that term is defined below).

**RECITALS**

The Parties enter into this Amendment No. 1 with reference to the following facts:

- A. SCE and Seller are Parties to that certain Renewable Power Purchase and Sale Agreement, dated as of April 10, 2009 (as amended from time to time, the "Agreement"), under which, among other things, Seller will sell to SCE, and SCE will purchase from Seller, Product upon commencement of the Term.
- B. This Amendment No. 1 modifies the definition of "Green Attributes" to conform to the CPUC required language as set forth herein.

**AGREEMENT**

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

**1. AMENDMENT**

- (a) Exhibit A is hereby amended by modifying the defined term "Green Attributes" as follows:
  - (i) In the first line of subsection (1), the word "emissions" is replaced by the word "emission";
  - (ii) In the first line of subsection (ii), the word "Operation" is replaced by the word "operation"; and
  - (iii) In the first line of the last paragraph, the phrase "landfill gas" is replaced by the word "biogas".

**2. MISCELLANEOUS**

- (a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- (c) Governing Law. THIS AMENDMENT NO. 1 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISIONS THEREOF.
- (d) Successors and Assigns. This Amendment No. 1 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 1 on behalf of such Party and to bind such Party to this Amendment No. 1. Any written notice required to be given under the terms of this Amendment No. 1 shall be given in accordance with the terms of the

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*The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.*

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*Amendment No. 1 to Renewable Power Purchase and Sale Agreement*

Agreement.

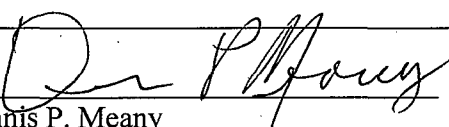
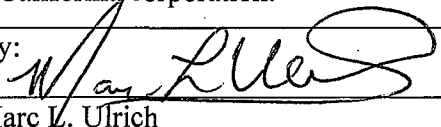
- (f) Effective Date. This Amendment No. 1 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 1.
- (g) Further Agreements. This Amendment No. 1 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Amendment No. 1 may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 1 and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 1 as to the Parties and may be used in lieu of the original Amendment No. 1 for all purposes.

[Remainder of Page Left Intentionally Blank.]



RAP ID #6334, Goshen Phase II, LLC

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 1 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

<b>Goshen Phase II, LLC,</b> a Delaware limited liability company.	<b>SOUTHERN CALIFORNIA EDISON COMPANY,</b> a California corporation.
By:  Dennis P. Meany Secretary	By:  Marc L. Ulrich Director, Renewable and Alternative Power
Date: <u>August 19, 2009</u>	Date: <u>Aug. 20, 2009</u>

*The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.*

*Amendment No. 1 to Renewable Power Purchase and Sale Agreement*

RAP ID #6334, Goshen Phase II, LLC

AMENDMENT NO. 2  
to the  
RENEWABLE POWER PURCHASE AND SALE AGREEMENT  
between  
SOUTHERN CALIFORNIA EDISON COMPANY  
and  
GOSHEN PHASE II, LLC

(RAP ID #6334)

This Amendment No. 2 to the Renewable Power Purchase and Sale Agreement ("Amendment No. 2") is entered into between SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation ("SCE") and GOSHEN PHASE II, LLC, a Delaware limited liability company ("Seller"). SCE and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Capitalized terms used and not otherwise defined in this Amendment No. 2 shall have the meanings ascribed to such terms in the Agreement (as that term is defined in recital A below).

**RECITALS**

The Parties enter into this Amendment No. 2 with reference to the following facts:

- A. SCE and Seller are Parties to that certain Renewable Power Purchase and Sale Agreement, dated as of April 10, 2009 (the "Agreement"), under which, among other things, Seller will sell to SCE, and SCE will purchase from Seller, Product upon commencement of the Term.
- B. SCE and Seller executed Amendment No. 1, dated as of August 20, 2009 to modify the definition of "Green Attributes" to conform to the CPUC required language.
- C. SCE and Seller have agreed to enter into this Amendment No. 2 to reflect that Seller shall provide an additional Six Million Dollars (\$6,000,000) of Performance Assurance in lieu of the Secured Interests required under Section 8.04 of the Agreement on the terms and conditions specified in this Amendment No. 2.
- D. Amendment No. 2 will also add or replace existing provisions, including certain new

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

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RAP ID #6334, GOSHEN PHASE II, LLC

provisions set forth in CPUC Decision D.10-03-021.

**AMENDMENT**

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Amendment to Section 1.07 Performance Assurance Amount.

Section 1.07 is hereby deleted in its entirety and replaced with the following:

“1.07 Performance Assurance Amount.

One hundred eighty three dollars and nineteen cents (\$183.19) per kW of Contract Capacity.”

2. Amendment to Section 2.04 Conditions Precedent to Commencement of Term.

Section 2.04(b)(xiii) is hereby deleted in its entirety and replaced with the following:

“2.04(b)(xiii) [Intentionally Deleted]”

3. Amendment to Section 3.28 NERC Electric System Reliability Standards.

Section 3.28 is hereby deleted in its entirety and replaced with the following:

“During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as consented to by SCE, which consent shall not be unreasonably withheld ) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that SCE, in its capacity as Scheduling Coordinator, is required to perform under this Agreement, if Seller is required to be a registered entity pursuant to the NERC Reliability Standards. Notwithstanding anything to the contrary set forth in this Section 3.28, SCE and Seller each acknowledge that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each such Party to implement the processes and procedures required by NERC or WECC in order to comply with the NERC Reliability Standards.”

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

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RAP ID #6334, GOSHEN PHASE II, LLC

4. Amendment to Article 8.

a. Section 8.04 is hereby deleted in its entirety and replaced with the following:

“8.04 [Intentionally Deleted]”.

b. Section 8.05(a) is hereby deleted in its entirety and replaced with the following:

“(a) Seller and each Owner shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of SCE with respect to the Security Interests provided for herein;”.

c. Section 8.06(b) is hereby deleted in its entirety.

5. Amendment to Section 10.02.

Section 10.02(c) is deleted in its entirety and replaced with new Sections 10.02(c) through 10.02(e) as follows:

“(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(d) In making its representations and warranties under Section 10.2(b), (c) and (e), Seller is making them subject to, and in reliance on, Section 3.01(d) and Section 3.19, and the term “commercially reasonable efforts” as used in Section 10.02(b) and (c) shall have the meaning set forth in Section 3.19.

(e) Seller warrants that all necessary steps to allow the renewable energy credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.”

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

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RAP ID #6334, GOSHEN PHASE II, LLC

6. Amendment to Exhibit A

Exhibit A is hereby amended as follows:

- (a) The following definitions are hereby deleted in their entireties and replaced by the following:

“91. “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>.”

“92. “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>.”

“93. “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 owner of generating units as described in the Statement of Compliance Registry Criteria at <http://www.wecc.biz>.”

“94. “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>.”

“144. “NERC” means the North American Electric Reliability Council, or any successor thereto.”

“145. “NERC Reliability Standards” means the NERC Statement of Compliance Registry Criteria (Revision 4.0), which is, as of the Effective Date, available at [http://www.wecc.biz/documents/library/compliance/manuals/Statement\\_of\\_Compliance\\_Registry\\_Criteria\\_V4-0.pdf](http://www.wecc.biz/documents/library/compliance/manuals/Statement_of_Compliance_Registry_Criteria_V4-0.pdf).”

“146. “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 obligations of Generator Operator or generator Owner as set forth in the NERC Reliability Standards.”

- (b) The definitions of “Secured Interests” and Security Documents” are deleted in their entirety.

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RAP ID #6334, GOSHEN PHASE II, LLC

7. Amendment to Exhibit V-1 Form of Security Agreement (Personal Property).

Exhibit V-1 is hereby deleted in its entirety.

8. Miscellaneous.

- (a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Legal Effect. Except as expressly set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect. The Parties agree that the effectiveness of this Amendment No. 2 is not contingent upon Buyer's receipt of CPUC approval of this Amendment No. 2.
- (c) Governing Law. THIS AMENDMENT NO. 2 AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AMENDMENT NO 2.
- (d) Successors and Assigns. This Amendment No. 2 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 2 on behalf of such Party and to bind such Party to this Amendment No. 2. Any written notice required to be given under the terms of this Amendment No. 2 shall be given in accordance with the terms of the Agreement.
- (f) Effective Date. This Amendment No. 2 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 2 ("Amendment No. 2 Effective Date").
- (g) Further Agreements. This Amendment No. 2 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (h) Counterparts; Electronic Signatures. This Amendment No. 2 may be executed in one or more counterparts, each of which will be deemed an original of this

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RAP ID #6334, GOSHEN PHASE II, LLC

Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No.2.and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 2 as to the Parties and may be used in lieu of the original Amendment No. 2 for all purposes.

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

*Amendment No. 2 to Renewable Power Purchase and Sale Agreement*

RAP ID #6334, GOSHEN PHASE II, LLC

IN WITNESS THEREOF, SCE and Seller have caused this Amendment No. 2 to be duly executed as provided below.

<b>GOSHEN PHASE II, LLC,</b> a Delaware limited liability company	<b>SOUTHERN CALIFORNIA EDISON COMPANY,</b> a California corporation.
By: <u><i>Dennis P Meany</i></u> Name: <i>Dennis P Meany</i> Title: <i>President</i> Date: <u><i>5/20/10</i></u>	By: <u><i>Mike Maelli</i></u> Name: <i>Mike Maelli</i> Title: <i>Director</i> Date: <u><i>5/26/10</i></u>

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