

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

*between*

**SOUTHERN CALIFORNIA EDISON COMPANY**

*and*

**MCCOY SOLAR, LLC**

(RAP ID #5494)

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# Southern California Edison

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- C. Notice List.
- D. Forecasting and Scheduling Requirements and Procedures.
- E. Payments and Invoicing.
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- G. Seller's Milestone Schedule.
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- S. Actual Availability Report.
- T. Meteorological Station Specifications.
- U. Notice of SCE's Rights.

**RENEWABLE POWER PURCHASE AND SALE AGREEMENT**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

**MCCOY SOLAR, LLC**

**(RAP ID #5494)**

**PREAMBLE**

This Renewable Power Purchase and Sale Agreement, together with its exhibits and attachments (collectively, the "Agreement"), is made and effective as of the following date: September 29, 2011 ("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) **McCoy Solar, LLC** ("Seller"), a Delaware limited liability company, whose principal place of business is at 700 Universe Boulevard, Juno Beach, Florida 33408.

SCE and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Exhibit A.

**RECITALS**

- A. Seller is willing to construct, own, and Operate the Generating Facility, which qualifies as of the Effective Date as an ERR, and to sell the Product to SCE pursuant to the terms and conditions set forth in this Agreement; and
- B. SCE is willing to purchase the Product from Seller pursuant to the terms and conditions set forth in this Agreement.

## ARTICLE ONE. SPECIAL CONDITIONS

### 1.01 Generating Facility.

- (a) Name: McCoy Solar Energy Center.
- (b) Location of Site: The Site will be one of the two Potential Sites, as further described in Exhibit B. In accordance with Section 3.09, this Section 1.01(b) shall be deemed amended to include the physical address of the Site upon Seller's selection of the Site from the two Potential Sites.
- (c) Description: As set forth in Exhibit B.
- (d) Product: (i) All electric energy produced by the Generating Facility throughout the Delivery Term (including the Excess Product), net of Station Use; and (ii) all Green Attributes, all Capacity Attributes, and all Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility throughout the Delivery Term.
- (e) Interconnection Point: Colorado River Substation at the 220kV bus.
- (f) Delivery Point: Colorado River Substation at the 220kV bus.
- (g) ERR Type: Solar photovoltaic.
- (h) Contract Capacity: 250 MW.

The Contract Capacity may be reduced as set forth in Section 3.06(g).

- (i) Expected Term Year Net Energy Production.

The Expected Term Year Net Energy Production for each Term Year will be the value calculated in accordance with one of the following two formulas, as applicable:

- (1) EXPECTED TERM YEAR NET ENERGY PRODUCTION, in kWh, for the first Term Year

$$= A * B$$

Where:

A = The Installed DC Rating, in kW<sub>PDC</sub>. (As of the Effective Date and until SCE's verification of Seller's installation of the Generating Facility pursuant to Exhibit L, this rating is deemed to be 312,500 kW<sub>PDC</sub>).

B = Term Year Energy Yield Factor of 2,174 kWh AC per kW<sub>PDC</sub> per Term Year.

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- (2) EXPECTED TERM YEAR NET ENERGY PRODUCTION  
for all Term Years after the first Term Year, in kWh

$$= X * (1 - Y)^{(Z-1)}$$

Where:

- X = Expected Term Year Net Energy Production, for the first Term Year, calculated as set forth in Section 1.01(i)(1), in kWh.
- Y = The Photovoltaic Module degradation factor of 0.005 per Term Year.
- Z = Term Year number (e.g., the Term Year number for the second Term Year would be "2").

1.02 Initial Synchronization.

- (a) Forecasted Initial Synchronization Date.

The Forecasted Initial Synchronization Date is August 30, 2014.

If the Initial Synchronization Date falls on any date other than the Forecasted Initial Synchronization Date, Seller shall assure that SCE will have at least sixty (60) days advance Notice of the Initial Synchronization Date, as such date may be extended in accordance with and subject to this Agreement.

- (b) Initial Synchronization Deadline.

Notwithstanding anything in this Agreement to the contrary, the Initial Synchronization Date must occur (i) no earlier than the Forecasted Initial Synchronization Date, and (ii) subject to extensions made pursuant to Sections 3.06(c) or 5.03, no later than May 31, 2017 (such latter date, "Initial Synchronization Deadline"); *provided*, that notwithstanding anything in this Agreement to the contrary, the Initial Synchronization Deadline may not be later than November 30, 2017.

1.03 Forecasted Commercial Operation Date.

The Forecasted Commercial Operation Date is November 30, 2016.

1.04 Commercial Operation Deadline.

- (a) Notwithstanding anything in this Agreement to the contrary, the Commercial Operation Date must occur (i) no earlier than the Forecasted Commercial Operation Date, and (ii) subject to any extensions made pursuant to Sections 1.04(b), 1.04(c), 3.06(c) or 5.03, no later than the first day after the twenty-seventh (27<sup>th</sup>) calendar month following Initial Synchronization (such latter date, "Commercial Operation Deadline"); *provided*, that notwithstanding

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anything in this Agreement to the contrary, the Commercial Operation Deadline may not be later than December 31, 2018, except in the case of an extension pursuant to Section 1.04(c), in which case, the Commercial Operation Deadline may not be later than December 31, 2019.

- (b) Subject to the proviso set forth in Section 1.04(a), the Commercial Operation Deadline will be extended on a day-for-day basis for any delay in enactment of the Federal Tax Credit Legislation beyond December 31, 2016.
- (c) Subject to the proviso set forth in Section 1.04(a), the Commercial Operation Deadline will be extended on a day-for-day basis for any delay in completion of the Delivery Network Upgrades required pursuant to the Interconnection Agreement beyond December 31, 2017.

1.05 [Intentionally omitted.]

1.06 Term.

The Term commences on the Commercial Operation Date determined in accordance with Section 2.03 and ends on the later of:

- (a) the last day of the calendar month that is two hundred forty (240) months (twenty (20) years) from the month of the Commercial Operation Date (the "Original Term"); or
- (b) if SCE provides Notice to Seller no later than nineteen (19) years after the Commercial Operation Date that Seller is obligated to deliver to SCE at the Delivery Point the quantity of Product that is two (2) times the quantity of Banked Curtailed Energy as of the last day of the Original Term ("Curtailed Return Term Notice"), then the Term ends on the earlier of:
  - (i) the day on which Seller has delivered to SCE at the Delivery Point the quantity of Product that is two (2) times the quantity of the Banked Curtailed Energy; or
  - (ii) one (1) year after the last day of the Original Term (the period set forth in Section 1.06(b)(i) or this Section 1.06(b)(ii) is referred to as the "Curtailed Return Term").

1.07 Product Price.

- (a) Original Term. During the Original Term, the Product Price shall be Seventy-Five and 00/100 dollars (\$75.00) per MWh; *provided*, that if in any Term Year during the Original Term, the Curtailed and Delivered Amount exceeds one-hundred fifteen percent (115%) of the Expected Term Year Net Energy Production applicable to that Term Year (such excess amount of electric energy, the "Excess Product"), then the Product Price for the Excess Product during such Term Year shall equal Fifty-Six and 25/100 dollars (\$56.25) per MWh.

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- (b) Curtailed Return Term. During the Curtailed Return Term, the Product Price shall be Thirty-Seven and 50/100 dollars (\$37.50) per MWh.

1.08 Performance Assurance Amount.

In accordance with Section 8.02, Seller shall post and maintain Performance Assurance in a dollar amount as shown on the chart below, but not less than One Million dollars (\$1,000,000) for any Term Year. For purposes of the chart below, the first Term Year covers the period from the Commercial Operation Date to and including the end of the first Term Year.

<u>Term Year</u>	<u>Performance Assurance Amount (\$/kW of Contract Capacity)</u>
1	139.32
2	139.32
3	232.20
4	232.20
5	232.20
6	278.64
7	278.64
8	278.64
9	278.64
10	278.64
11	278.64
12	278.64
13	278.64
14	278.64

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15	278.64
16	232.20
17	232.20
18	139.32
19	139.32
20	139.32
Curtailed Return Term	139.32

1.09 [Intentionally omitted.]

1.10 Curtailed Return Cap.

Contract Capacity times fifty (50) hours = 12,500 MWh per Term Year.

1.11 Interconnection Queue Position.

193.

1.12 Federal Tax Credit.

Seller (check one box only):

- (a)  qualifies for and may take the Federal Investment Tax Credit.
- (b)  qualifies for and will take the Federal Production Tax Credit, and has selected to be eligible for Federal Production Tax Credit reimbursement under Section 4.03.
- (c)  qualifies for and will take the Federal Production Tax Credit, but has selected to not be eligible for Federal Production Tax Credit reimbursement under Section 4.03.
- (d)  will not take a Federal Tax Credit.

1.13 Compliance Expenditure Cap.

If Seller establishes to SCE's reasonable satisfaction that a change in Applicable Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under this Agreement with respect to obtaining, conveying or effectuating SCE's use of (as applicable), the items listed in Sections 1.13(a) through (d), then Seller's required out-of-pocket expenses are limited to Two Hundred Fifty Thousand dollars (\$250,000) in the aggregate each Term Year

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("Compliance Expenditure Cap") between the Effective Date and the last day of the Term:

- (a) Obtaining and maintaining CEC Pre-Certification or CEC Certification and Verification;
- (b) Green Attributes;
- (c) Capacity Attributes; and
- (d) Resource Adequacy Benefits.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to SCE of such anticipated out-of-pocket expenses.

SCE will 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 shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such SCE-agreed upon costs, the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which SCE has not agreed to reimburse Seller.

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.

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

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**ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION****2.01 Effective Date and Obligations prior to Effective Date.**

- (a) This Agreement becomes effective on the Effective Date.
- (b) Upon the execution and delivery of this Agreement, each Party acknowledges receipt of the following items:
  - (i) Signing authority consisting of evidence of authority, incumbency and specimen signature of each individual executing this Agreement or any other document on its behalf in connection with this Agreement; and
  - (ii) Certified copies of resolutions of the Board of Directors, or of its relevant committees, showing that the Party is authorized to execute and deliver this Agreement and to perform its obligations under this Agreement.

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

Within sixty (60) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has 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 Applications for Interconnection and Transmission Service Agreements.**

- (i) The Interconnecting Affiliate, the CAISO and the Transmission Provider have entered into the Interconnection Agreement, and the Interconnection Agreement reflects that the Generating Facility will have Full Capacity Deliverability Status.
- (ii) Seller shall, or shall cause the Interconnecting Affiliate, to apply for and expeditiously seek (1) FERC's acceptance of the Interconnection Agreement, and (2) any service agreement required to transmit electric energy to the Delivery Point.
- (iii) Seller shall not withdraw, and shall not permit the Interconnecting Affiliate or the Interconnection Sharing Affiliate to withdraw, the Interconnection Queue Position.
- (iv) Seller shall not assign or transfer, and shall not permit the Interconnecting Affiliate or the Interconnection Sharing Affiliate to

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assign or transfer any agreement (or any of Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights, interests or obligations thereunder) relating to Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights to use the Interconnection Queue Position or to interconnect under the Interconnection Agreement, without SCE's prior written consent, which consent shall not be unreasonably withheld; *provided*, that Seller may share rights to interconnect under the Interconnection Agreement with the Interconnection Sharing Affiliate, and that such sharing of rights will not be deemed an assignment or transfer of the Interconnection Queue Position, but only so long as such sharing of rights does not affect any of Seller's obligations or SCE's rights under this Agreement; and, *provided further*, that the foregoing prohibition shall not apply to the collateral assignment (or the exercise of any rights under the terms of such collateral assignment by a lender) of any agreement (or any of Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights, interests or obligations thereunder) relating to Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights to use the Interconnection Queue Position or to interconnect under the Interconnection Agreement.

- (v) Seller shall not assign or transfer, and shall not permit either the Interconnecting Affiliate or the Interconnection Sharing Affiliate to assign or transfer, the Shared Facilities Agreement or the Interconnection Assignment Agreement (or any of Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights, interests or obligations under the Shared Facilities Agreement or the Interconnection Assignment Agreement) to any Person or for the benefit of any power purchase and sale agreement other than this Agreement (other than, in the case of the Interconnection Sharing Affiliate, the Genesis PPA), without SCE's prior written consent, which consent shall not be unreasonably withheld; *provided*, that the foregoing prohibition shall not apply to the collateral assignment (or the exercise of any rights under the terms of such collateral assignment by a lender) of the Shared Facilities Agreement or the Interconnection Assignment Agreement (or any of Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights, interests or obligations under the Shared Facilities Agreement or the Interconnection Assignment Agreement) by Seller, the Interconnecting Affiliate, or the Interconnection Sharing Affiliate.
- (vi) Seller shall not amend or otherwise revise, and shall not permit the Interconnecting Affiliate or the Interconnection Sharing Affiliate to amend or otherwise revise, the Shared Facilities Agreement or the

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- Interconnection Assignment Agreement, without SCE's prior written consent, which consent shall not be unreasonably withheld.
- (vii) Notwithstanding anything in this Section 2.02(b) to the contrary, the restrictions set forth in Sections 2.02(b)(iv) and (v) shall not apply to the extent explicitly contemplated under the terms of the Interconnection Agreement (which explicit contemplation does not include any general assignment rights of the parties to the Interconnection Agreement).
- (c) Seller's Regulatory and Governmental Filings.
- (i) Within one hundred eighty (180) days after the Effective Date, Seller shall file an application or other appropriate request for CEC Pre-Certification for the Generating Facility.
  - (ii) Seller shall file all applications or other appropriate requests with the proper authorities for each Material Construction Permit no later than the date set forth in Exhibit G-1 with respect to such Material Construction Permit.
  - (iii) Seller shall expeditiously seek CEC Pre-Certification and all Material Permits, as set forth in Exhibit G-2, including promptly responding to any requests for information from the requesting authority.
  - (iv) Within thirty (30) days after the Commercial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification for the Generating Facility.
  - (v) Seller shall expeditiously seek CEC Certification and maintain CEC Verification, including promptly responding to any requests for information from the requesting authority.

2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

The Term commences upon the Commercial Operation Date.

(b) Commercial Operation.

- (i) Subject to Section 1.04(a)(i) and the remainder of this Section 2.03(b), the Commercial Operation Date shall be a date selected by Seller upon at least three (3) Business Days' advance Notice to SCE.
- (ii) The Commercial Operation Date may not occur until each of the following has been satisfied:
  - (1) Seller has completed the installation and testing of the Generating Facility for purposes of financing (to the extent Seller has obtained third-party financing), Permits, the Interconnection Agreement, operating agreements, the

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engineering, procurement and construction contract, and manufacturer's warranties;

- (2) Seller has received an independent engineer's certification that the Generating Facility has been completed in all material respects (except punch list items that do not materially and adversely affect the ability of the Generating Facility to operate as intended);
- (3) Seller has obtained Full Capacity Deliverability Status;
- (4) Seller is prepared to perform (and to continue to perform) its energy delivery and related obligations in accordance with the requirements hereof;
- (5) Seller has met all conditions set forth in Section 3.12(c);
- (6) Seller shall have obtained Material Permits, as set forth in Exhibit G-2;
- (7) Seller shall have posted with SCE the Performance Assurance required under Section 8.02 calculated in accordance with Section 1.08;
- (8) The Generating Facility must be Operating in parallel with the applicable Transmission Provider's electric system;
- (9) Seller shall be Forecasting in accordance with Exhibit D; and
- (10) Seller shall be delivering electric energy to SCE at the Delivery Point.

2.04 [Intentionally omitted.]

2.05 Termination Rights.

(a) Termination Rights of the Parties.

If either Party exercises a termination right, as set forth in Sections 2.05(a)(i), 2.05(a)(ii) or 5.05, a Termination Payment will be calculated in accordance with Section 6.03 (although no Event of Default shall have occurred), the Forward Settlement Amount will be zero dollars (\$0), the terminating Party will be considered the Non-Defaulting Party and, if the termination occurs before the commencement of the Term, Seller will be entitled to a return of any Development Security provided to SCE.

(i) Termination Rights of Both Parties.

- (1) Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by SCE in its sole discretion within three hundred



sixty-five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety-fifth (395<sup>th</sup>) day after SCE files the request for CPUC Approval.

- (2) Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CEC Pre-Certification has not been obtained by Seller within twelve (12) months after the Effective Date and a Notice of termination is given on or before the end of the thirteenth (13<sup>th</sup>) month after the Effective Date.
  - (3) Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Seller has not obtained Permit Approval of each Material Construction Permit by the applicable date set forth in Exhibit G-1 for obtaining Permit Approval for such Material Construction Permit, and a Notice of termination is given on or before the ninetieth (90<sup>th</sup>) day following such date for obtaining Permit Approval for such Material Construction Permit.
  - (4) Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if the Transmission Completion Date does not occur on or before October 31, 2017 solely because the conditions set forth in subparagraph (b) and (c) of the definition of Transmission Completion Date have not been satisfied, and such Notice is given not later than November 30, 2017; *provided*, that in the event that Seller desires to terminate this Agreement pursuant to this Section 2.05(a)(i)(4), Seller also demonstrates to SCE that it has completed its obligations, taken the actions and met its deadlines needed to ensure timely physical interconnection to the CAISO Controlled Grid.
- (ii) Termination Rights of Seller.

Seller has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to SCE, if the Federal Tax Credit Legislation applicable to Seller's selection of (a), (b), or (c) in Section 1.12 is not enacted on or before September 30, 2017, and such Notice is given to SCE not later than October 31, 2017; *provided*, that Seller shall not have any right to terminate this Agreement in accordance with this Section 2.05(a)(ii) if the Commercial Operation Date occurs on or before December 31, 2016.

(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.

This Agreement automatically terminates at the end of the Term as set forth in Section 1.06 unless earlier terminated as provided in this Agreement.

2.06 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 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 before or as a result of the termination of this Agreement, including:

- (i) The obligation of Seller to pay the Product Replacement Damage Amount as set forth in Section 3.07(b);
- (ii) The obligation to make, or the right to receive, a Termination Payment as set forth in Section 6.03;
- (iii) The indemnity obligations as set forth in Section 10.03;
- (iv) The obligation of confidentiality as set forth in Section 10.10;
- (v) The right to pursue remedies as set forth in Sections 6.02 and 12.04;
- (vi) The limitation of liabilities as set forth in Article Seven;
- (vii) A Party's obligation:
  - (1) To make or receive payment, as applicable, for CAISO Revenues and make payment for CAISO Costs, CAISO Sanctions, and SCE Penalties, as applicable, during the Startup Period and the Term as set forth in Article Four, Exhibit E and Exhibit Q; and
  - (2) To make or receive Product Payments as set forth in Exhibit E;
- (viii) 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 2.06(b) and 3.06(h), if applicable;
- (ix) The obligation of Seller to post and maintain Performance Assurance, as set forth in Section 8.02;

- (x) The obligation of Seller to pay to SCE the Development Security if SCE terminates this Agreement in accordance with Section 6.02 prior to Initial Synchronization or Commercial Operation, as applicable;
  - (xi) The dispute resolution provisions of Article Twelve;
  - (xii) The obligation of SCE to return any Development Security under Section 3.06 and Performance Assurance under Section 8.02, as applicable; and
  - (xiii) Seller's obligations under Section 3.01(e)(iv).
- (b) Limitations on Seller's and Seller's Affiliates' Ability to Make or Agree to Third Party Sales from the Site after Certain Terminations of this Agreement.

If Seller terminates this Agreement, as provided in Sections 2.05(a)(i)(2), 2.05(a)(i)(3), or 5.05 (based on a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.06(d), or due to an Event of Default of Seller prior to Commercial Operation Deadline, neither Seller nor Seller's Affiliates may sell, or enter into a contract 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 Person other than SCE for a period of two (2) years following the effective date of such termination (the "Restricted Period").

This prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a Person other than SCE, Seller or Seller's Affiliate provides SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE at the price set forth in this Agreement for each of the Startup Period and the Term, and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Generating Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) during the Restricted Period so long as the limitations contained in this Section 2.06(b) apply, unless the transferee agrees to be bound by the terms set forth in this Section 2.06(b) pursuant to a written agreement approved by SCE, which approval shall not be unreasonably withheld. Upon termination of this Agreement pursuant to the Sections referenced in the first paragraph of this Section 2.06(b), Seller shall deliver a Notice of SCE's Rights in respect of the Site, in the form attached hereto as Exhibit U, that SCE may record giving notice of SCE's rights under this Section 2.06(b).

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*RAP ID #5494, McCoy Solar, LLC*

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

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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, Capacity Attributes and Resource Adequacy Benefits.**

- (a) Metered Amounts. Seller shall dedicate and convey the *entire* Metered Amounts throughout the Delivery Term to SCE. Seller shall convey title to and risk of loss of all Metered Amounts to SCE at the Delivery Point.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Retention of Federal Tax Credits. Notwithstanding anything to contrary set forth in this Agreement, Seller shall be entitled to all Federal Tax Credits (including any cash payments or grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009 or outright grants of money) relating in any way to (i) the Generating Facility or (ii) the generation of the Green Attributes.
- (d) Capacity Attributes and Resource Adequacy Benefits. Seller shall dedicate and convey any and all Capacity Attributes and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility throughout the Delivery Term to SCE and SCE shall be given sole title to all such Capacity Attributes and Resource Adequacy Benefits.
- (e) Further Action by Seller. Subject to Section 1.13, commencing at least six (6) months before the Initial Synchronization Date and throughout the Delivery Term, Seller shall, at its own cost, take all actions and execute all documents or instruments necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Delivery Term, which actions include:
  - (i) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
  - (ii) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes;
  - (iii) Complying with all current and future CAISO Tariff provisions that address resource adequacy and are applicable to the Generating

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Facility, including provisions regarding performance obligations and penalties;

- (iv) Complying with Applicable Laws regarding the certification and transfer of Renewable Energy Credits, including participation in the Western Renewable Energy Generation Information System (“WREGIS”) or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility. With respect to WREGIS, Seller shall cause and allow SCE to be the “Qualified Reporting Entity” and “Account Holder” (as these two terms are defined by WREGIS) for the Generating Facility; and
- (v) Committing to SCE the full output of the Generating Facility.
- (f) Other Sales of Product. From the Effective Date throughout the Delivery Term, Seller shall not sell the Product (or any portion thereof) to any Person other than SCE.

### 3.02 Resource Adequacy Rulings.

Subject to Section 1.13, Seller grants, pledges, assigns and otherwise commits to SCE the generating capacity of the Generating Facility in order for SCE to meet its resource adequacy obligations under any Resource Adequacy Rulings.

Seller represents, warrants and covenants to SCE that Seller:

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits on, any Person other than SCE; and
- (b) Throughout the Delivery Term, will not use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility to meet the resource adequacy requirements of, or to confer Resource Adequacy Benefits on, any Person other than SCE.

### 3.03 Maintenance as ERR.

Subject to Section 1.13, Seller covenants that throughout the Term the Project is qualified and 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 the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.

### 3.04 Allocation of Availability Incentive Payments and Non-Availability Charges.

If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, any Availability Incentive Payments will be for the

- benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.
- 3.05 Permits, Interconnection and Transmission Service Agreements, and CAISO Tariff Compliance.
- (a) Seller shall, or shall cause its Interconnecting Affiliate to, obtain and maintain throughout the Delivery Term any and all interconnection and transmission service rights and Permits required to effect delivery of the electric energy from the Generating Facility to the Delivery Point.
  - (b) Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Transmission Provider's electric system and transmission of electric energy from the Generating Facility to the Delivery Point.
  - (c) Seller shall comply with the CAISO Tariff, including securing and maintaining in full force all required CAISO agreements, certifications and approvals.
  - (d) Seller shall secure through the CAISO the CAISO Resource ID that is to be used solely for this Generating Facility.
  - (e) Seller shall comply with the requirements of Appendix H to Appendix CC of the CAISO Tariff.
- 3.06 Development Security.
- (a) Amount.

Seller shall post and thereafter maintain a development fee ("Development Security") equal to Sixty dollars (\$60) for each kilowatt of Contract Capacity.
  - (b) Posting Requirements.

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

    - (i) Seller shall post one-half of the Development Security within thirty (30) days following the Effective Date, with the remainder to be posted within thirty (30) days after CPUC Approval is obtained or waived by SCE in its sole discretion;
    - (ii) The Development Security shall be held by SCE as security for Seller's achieving:
      - (1) Initial Synchronization on or, subject to Section 1.02(b)(i), before the Initial Synchronization Deadline; and
      - (2) Commercial Operation on or, subject to Section 1.04(a)(i), before the Commercial Operation Deadline, and demonstrating

the Contract Capacity in accordance with the terms of this Agreement.

- (iii) The Development Security must be in the form of either a cash deposit or a Letter of Credit;
  - (iv) If Seller posts any Development Security in cash, Seller will receive Simple Interest Payments in accordance with the procedure specified in Section 4.08 of this Agreement; and
  - (v) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Exhibit N.
- (c) Daily Delay Liquidated Damages to Extend Initial Synchronization Deadline or Commercial Operation Deadline.

Seller may extend the Initial Synchronization Deadline or Commercial Operation Deadline, as applicable, by paying to SCE damages in an amount equal to one percent (1%) of the Development Security per day for each day (or portion thereof) from and including the Initial Synchronization Deadline or Commercial Operation Deadline to and excluding the Initial Synchronization Date or Commercial Operation Date, respectively ("Daily Delay Liquidated Damages").

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

Seller may further extend the Initial Synchronization Deadline or Commercial Operation Deadline beyond the original Initial Synchronization Deadline or Commercial Operation Deadline extension period, as applicable, subject to the same terms applicable to the original Initial Synchronization Deadline or Commercial Operation Deadline extension, as applicable.

The Daily Delay Liquidated Damages payments applicable to days included in any Initial Synchronization Deadline or Commercial Operation Deadline extension are nonrefundable and are in addition to, and not a part of, the Development Security.

Seller will 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 Initial Synchronization

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Deadline or Commercial Operation Deadline, as applicable, was actually extended.

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

(d) Failure to Meet Initial Synchronization Deadline or Commercial Operation Deadline.

Subject to Seller's right to extend, as applicable, the Initial Synchronization Deadline and Commercial Operation Deadline as provided in Section 1.04(b), Section 1.04(c), Section 3.06(c) and Section 5.03 (for Force Majeure where Seller is the Claiming Party), in the event that (i) Seller and SCE mutually agree that Initial Synchronization will not occur on or, subject to Section 1.02(b)(i), before the Initial Synchronization Deadline, (ii) the Initial Synchronization Date will not occur due to any termination of this Agreement as a result of an Event of Default by Seller occurring on or before the Initial Synchronization Deadline, (iii) Seller and SCE mutually agree that Commercial Operation will not occur on or, subject to Section 1.04(a)(i), before the Commercial Operation Deadline, (iv) the Commercial Operation Date will not occur due to any termination of this Agreement as a result of an Event of Default by Seller occurring on or before the Commercial Operation Deadline, (v) the initial procurement of Photovoltaic Modules and Current Inverters for the Generating Facility does not occur within one hundred eighty (180) days after the applicable date set forth in the Milestone Schedule, or (vi) Seller abandons the Generating Facility, SCE shall be entitled to:

- (A) The entire Development Security, including the right to draw on and retain for its sole benefit any Letter of Credit and the proceeds thereof, as well as any cash, posted as Development Security; and
- (B) Terminate this Agreement,

*provided*, that SCE shall give Notice to Seller of SCE's determination under Sections 3.06(d)(v) and 3.06(d)(vi) that the Initial Synchronization Date or Commercial Operation Date is unlikely to occur on or before the Initial Synchronization Deadline or Commercial Operation Deadline, as applicable, and if within thirty (30) days from the date of such Notice Seller can establish to SCE's reasonable satisfaction that the Initial Synchronization Date or Commercial Operation Date is likely to occur on or, subject to Section 1.02(b)(i) or 1.04(a)(i), before the Initial Synchronization Deadline or Commercial Operation Deadline, as applicable, SCE may not terminate this Agreement before the Initial Synchronization Deadline or Commercial Operation Deadline, as applicable, or retain the Development Security at that time, but shall retain all other rights under this Agreement, including the right to terminate this Agreement and retain the entire Development Security if the

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Initial Synchronization Date does not occur on or before the Initial Synchronization Deadline in accordance with Section 3.06(d)(i), or the Commercial Operation Date does not occur on or before the Commercial Operation Deadline in accordance with Section 3.06(d)(iii).

If SCE terminates this Agreement pursuant to this Section 3.06(d), any amount of Development Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE.

In addition, subject to Section 2.06(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

Notwithstanding any Termination Payment that would otherwise be due under this Agreement because Seller failed to achieve the Initial Synchronization Date by the Initial Synchronization Deadline or the Commercial Operation Date by the Commercial Operation Deadline, termination of this Agreement and retention of the Development Security shall be SCE's sole and exclusive remedy for Seller's failure to achieve the Initial Synchronization Date by the Initial Synchronization Deadline or the Commercial Operation Date by the Commercial Operation Deadline, or for any other event pursuant to this Section 3.06(d); *provided*, that notwithstanding anything to the contrary set forth in this Agreement, SCE has the right to enforce those obligations of Seller that survive termination of this Agreement, as referenced in Sections 2.06(a)(vii) and 2.06(a)(x), and as set forth in Sections 2.06(b), 3.01(e)(iv), 3.06(h), 10.03 and 10.10, and Articles Seven and Twelve.

(e) Full Return of Development Security.

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

- (i) Subject to the Commercial Operation Date occurring on or, subject to Section 1.04(a)(i), before the Commercial Operation Deadline or any extended Commercial Operation Deadline as provided in this Agreement, if Seller demonstrates the full Contract Capacity specified in Section 1.01(h) in accordance with the procedure set forth in Exhibit L; or
- (ii) If this Agreement is terminated in accordance with Section 2.05(a)(i), Section 2.05(a)(ii), or Section 5.05; *provided*, a termination under Section 5.05 only entitles Seller to a return of the Development Security if the termination is based on a Force Majeure that prevents the Initial Synchronization Date or Commercial Operation Date from occurring on or, subject to Section 1.02(b)(i) or 1.04(a)(i), before the Initial Synchronization Deadline or Commercial Operation Deadline, as applicable, or prevents Seller from demonstrating full Contract Capacity in accordance with the procedure set forth in Exhibit L.

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(f) Partial Return of the Development Security.

If Commercial Operation occurs on or, subject to Section 1.04(a)(i), before the Commercial Operation Deadline, but the Demonstrated Contract Capacity is less than the Contract Capacity set forth in Section 1.01(h), then Seller will be entitled to a return of only a portion of the Development Security equal to the product of Sixty dollars (\$60) per kilowatt times the kilowatts of Demonstrated Contract Capacity.

(g) Modification of Special Conditions.

(i) If the Contract Capacity set forth in Section 1.01(h) is greater than the Demonstrated Contract Capacity:

- (1) The Contract Capacity will be reduced to an amount equal to the Demonstrated Contract Capacity;
- (2) The Expected Term Year Net Energy Production will be recalculated using the Installed DC Rating pursuant to the procedures in Exhibit L; and
- (3) The Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 8.02 will be recalculated using such adjusted Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Contract Capacity will be returned to Seller; and

(ii) Neither Party will 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"), subject to Section 3.06(h).

(h) Restrictions on Sales Related to Unincluded Capacity.

(i) Neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes or Resource Adequacy Benefits associated with or attributable to Unincluded Capacity from any generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE's Notice to Seller of Seller's partial forfeiture of the Development Security pursuant to Exhibit L.

(ii) With respect to Seller's Affiliates, the prohibition on contracting and sale as set forth in Section 3.06(h)(i) will not apply if, before entering into the contract or making a sale to a party other than SCE, any Seller's Affiliate wishing to enter into a contract or sale provides SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to

Unincluded Capacity to SCE on terms and conditions materially similar to or no less favorable to SCE than the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof; *provided*, any Seller's Affiliate wishing to enter into a contract or sale must:

- (1) Build a new generating facility separate from the Generating Facility to produce such additional electric energy and associated attributes;
- (2) Establish an entity other than Seller to act as the seller for such additional electric energy and associated attributes;
- (3) Meter such additional generating capacity separately from the Generating Facility, to SCE's reasonable satisfaction; and
- (4) Separately interconnect such additional generating capacity to the Transmission Provider, to SCE's reasonable satisfaction.

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

### 3.07 Seller's Energy Delivery Obligation.

On the commencement of the first Term Year and for every Term Year thereafter, Seller is subject to the electric energy delivery requirements and damages for failure to perform as set forth in this Section 3.07.

#### (a) Performance Requirements.

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

During each Calculation Period, Seller must deliver to SCE at least eighty five percent (85%) of the sum of the Expected Term Year Net Energy Production for the Term Years in that Calculation Period ("Seller's Energy Delivery Obligation").

##### (ii) Event of Deficient Energy Deliveries.

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

#### (b) Product Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.07(a)(ii), the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's Energy

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Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages an amount which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased replacement Product by reason of Seller's failure to perform (the "Product Replacement Damage Amount").

- (i) Within ninety (90) days after the end of the applicable Term Year, SCE shall calculate any Product Replacement Damage Amount as set forth in Exhibit F, and shall provide Notice to Seller of any Product Replacement Damage Amount owing, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data.
- (ii) Seller shall have thirty (30) days after receipt of SCE's Notice to review SCE's calculation and either pay the entire Product 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.
- (iii) The Parties shall negotiate in good faith to resolve any disputed portion of the Product 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.
- (iv) If the Parties are unable to resolve a dispute regarding any Product Replacement Damage Amount within thirty (30) days after the sending of a Notice of dispute by Seller, either Party may submit the dispute to mediation and arbitration as provided in Article Twelve.

(c) Continuing Obligations of Seller.

Notwithstanding any payment of a Product Replacement Damage Amount, all of Seller's obligations under Sections 3.01 and 3.02 continue to apply.

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

(a) CAISO Approved Meter.

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

(b) Check Meter.

Seller will permit SCE to furnish and install one Check Meter on the high voltage side of the step-up transformer, substation, or any other location at SCE's sole discretion, associated with the Generating Facility in compliance

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with the applicable utility electric service requirements. Each Check Meter must be interconnected with SCE's communication network to permit:

- (i) Periodic, remote collection of revenue quality meter data; and
- (ii) Back-up real time transmission of operating-quality meter data.

(c) SCE's Access to Meters.

- (i) Subject to Section 3.18, Seller hereby grants SCE reasonable access to all CAISO Approved Meters and Check Meters for meter readings and any purpose necessary to effectuate this Agreement.
- (ii) Seller shall promptly provide SCE access to all meter data and data acquisition services both in real-time, and at later times, as SCE may reasonably request.
- (iii) Prior to Initial Synchronization, Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide SCE with access to the CAISO Approved Meter and to Seller's settlement data on OMAR.

(d) CAISO Approved Meter Maintenance.

- (i) Seller shall test and calibrate the CAISO Approved Meter, as necessary, but in no event will the period between testing and calibration dates be greater than twelve (12) months.
- (ii) Seller shall bear its own costs for any meter check or recertification of the CAISO Approved Meter.
- (iii) Seller shall replace the CAISO Approved Meter battery at least once every thirty-six (36) months or such shorter period as may be recommended by the CAISO Approved Meter manufacturer.  
  
Notwithstanding the foregoing, if the CAISO Approved Meter battery fails, Seller shall replace such battery within one (1) day after becoming aware of its failure.
- (iv) Seller shall use certified test and calibration technicians to perform any work associated with the CAISO Approved Meter.
- (v) 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.

(e) SCADA and Telemetry System.

All communication, metering, telemetry, and associated generation operation equipment will be centralized into the Generating Facility's SCADA. Seller shall configure the SCADA so that SCE may access it via the GMS from the

GOC. Seller shall link the systems via an approved SCE communication network, utilizing existing industry standard network protocol, as approved by SCE. The connection will be bidirectional in nature and used by the Parties to exchange all data points to and from the GOC. Seller shall be responsible for the costs of installing, configuring, maintaining and operating the SCADA and internal site links for the Generating Facility.

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

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

- (i) Reporting data from each CAISO-Approved Meter;
- (ii) Providing the status of key control points from the Generating Facility's control system;
- (iii) Routing generating unit set points to the Generating Facility's control system; and
- (iv) Communicating availability of the Generating Facility pursuant to Section 3.08(g).

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

The above mentioned connections and data transfer must be included in the systems engineering tasks as a part of the construction of the Generating Facility, and must be fully functional before Initial Synchronization.

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

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

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

The station(s) must be equipped with the Meteorological Equipment, as may be modified by Seller at SCE's direction from time to time to reflect the CAISO's PIRP/EIRP protocol and the requirements of Exhibit M.

The station(s) must be designed to collect and record data in accordance with CAISO's PIRP/EIRP protocols and the requirements of Exhibit M.

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Data reports must be formatted in a manner consistent with the CAISO requirements published on the CAISO internet website.

Telemetry equipment must be designed to function in accordance with CAISO's PIRP/EIRP protocols.

The station(s) must be equipped to measure and record the minimum data required by the CAISO, in the manner specified by the CAISO.

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

- (g) Real-Time Communication of Availability.
- (i) Prior to Initial Synchronization, Seller shall install a telecommunication system and demonstrate to SCE's reasonable satisfaction that the system interfaces with the Web Client and the GMS to provide SCE with Seller's Real-Time Availability.
  - (ii) Seller shall maintain the telecommunications path, the hardware, and software to provide quality data to SCE throughout the Delivery Term.
  - (iii) Upon Notice from SCE, Seller shall repair or have corrected, as soon as possible, but in no event later than five (5) days after 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 3.23 for any month in which Seller's telecommunications system was not available or did not provide quality data for longer than twenty-four (24) continuous hours.

3.09 Site Location and Control.

- (a) Exhibit B sets forth the description of two parcels of real property (each, a "Potential Site"), one of which must be the Site on which the Generating Facility will be located. Seller shall, prior to the start of construction, deliver a Notice to SCE specifying which one of the two Potential Sites will constitute the Site for purposes of this Agreement. Upon SCE's receipt of such Notice, Section 1.01(b) and Exhibit B of this Agreement shall be deemed amended so as to include as the Site only the Potential Site that Seller has selected as the Site in accordance with this Section 3.09(a).



- (b) This Agreement is Site specific. Seller may change the location of the Site or the Potential Sites only upon SCE's prior written consent, which consent is in SCE's sole discretion.
- (c) Seller shall have Site Control by start of construction and throughout the Delivery Term.
- (d) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.
- (e) Seller shall provide SCE with Notice of the status of its Site Control before commencing construction of the Generating Facility.

### 3.10 Change in Structure, Ownership or Financing.

Seller shall provide Notice to SCE within five (5) Business Days after a change in the status of any of the following:

- (a) Seller's exact and complete name, form of organization and state of incorporation or organization, or address of Seller's principal place of business; and
- (b) Seller's construction-period financing and Operating-period financing, including the sources of equity investments and debt financings.

No Notice provided pursuant to this Section 3.10 constitutes or substitutes for any consent or Notice required pursuant to Sections 10.04 or 10.05.

### 3.11 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 before the anticipated Initial Synchronization Date, the following Generating Facility information:
  - (i) Site plan drawings for the Generating Facility;
  - (ii) Electrical one-line diagrams;
  - (iii) Control and data-acquisition details and configuration documents;
  - (iv) Major electrical equipment specifications;
  - (v) General arrangement drawings;
  - (vi) Longitude and latitude of the centroid of the Site;
  - (vii) Artist renderings of the Site, if any;
  - (viii) Aerial photographs of the Site, if any;
  - (ix) Current Inverter specification;

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- (x) Photovoltaic Module specification;
- (xi) Solar energy collection grid diagrams; and
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed material changes in the Generating Facility, but in no event less than thirty (30) days before the changes are to be made, which Notice must include the information set forth in Section 3.11(c), along with all specifications and drawings pertaining to any such changes and any changes to Exhibit B.

### 3.12 Operation and Record Keeping.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Seller shall comply with Operating orders in compliance with the CAISO Tariff.
- (c) On or prior to Initial Synchronization:
  - (i) SCE shall have obtained or waived CPUC Approval;
  - (ii) Seller shall obtain CEC Pre-Certification;
  - (iii) Seller shall take all steps necessary to ensure that SCE becomes authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
  - (iv) Seller shall provide evidence to SCE's reasonable satisfaction that the Transmission Completion Date has occurred;
  - (v) SCE shall have been authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
  - (vi) Seller shall demonstrate to SCE's reasonable satisfaction that Seller or the Interconnecting Affiliate has executed all necessary Transmission Provider and CAISO agreements;
  - (vii) Seller shall provide to SCE the DLF and TLF, as applicable, used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility;
  - (viii) Seller shall be Forecasting to SCE in accordance with Exhibit D;
  - (ix) Seller shall commence delivering electric energy to SCE at the Delivery Point;
  - (x) Seller shall have installed and placed in operation all equipment and systems required under Section 3.08;
  - (xi) Seller shall have registered with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to be a registered entity pursuant to the NERC Reliability Standards; and

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- (xii) Seller shall have furnished to SCE all insurance documents required under Section 10.11.
- (d) Seller shall keep a daily operations log for the Generating Facility that shall include the following information:
  - (i) Availability of the Inverter Block Units and associated Current Inverters;
  - (ii) Circuit breaker trip operations;
  - (iii) Any significant events related to the Operation of the Generating Facility;
  - (iv) Real and reactive power and energy production;
  - (v) Changes in Operating status;
  - (vi) Protective apparatus operations;
  - (vii) Any unusual conditions found during inspections;
  - (viii) Electric energy production, fuel consumption and efficiency (if applicable); and
  - (ix) Status and settings of generator controls including automatic voltage regulator and power system stabilizer.

Seller shall maintain complete records of the Generating Facility's plane of array insolation, other pertinent meteorological conditions and operational status of each Inverter Block Unit.

- (e) Seller shall keep a maintenance log for the Generating Facility that shall include information on maintenance (both breakdown and preventative) performed, outages, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.

Seller shall maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC Reliability Standards applicable to protection systems for large electric generators, if Seller is required to be a registered entity pursuant to the NERC Reliability Standards.

Such information in Section 3.12(d) and this Section 3.12(e) shall be provided or made available to SCE within twenty (20) days after any Notice.

- (f) Seller shall promptly curtail the production of the Generating Facility:
  - (i) Upon Notice from SCE that Seller has been instructed by the CAISO or Transmission Provider to curtail energy deliveries;

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- (ii) Upon Notice that Seller has been given curtailment order or similar instruction in order to respond to an Emergency;
  - (iii) If no Schedule was awarded in either the Day-Ahead Market or the Real-Time Market;
  - (iv) If SCE issues an OSGC Order; or
  - (v) If SCE issues an RTOSGC Order.
- (g) Information maintained pursuant to this Section 3.12 shall be kept by Seller throughout the Delivery Term and shall be provided or made available to SCE within twenty (20) days after any Notice.
- (h) Seller must be interfaced with SCE's Generation Management System and be responsive to 5-minute Dispatch Instruction and other applicable Tariff rules in order to exercise the rights set forth in Section 4.03(d).

### 3.13 Obtaining Scheduling Coordinator Services.

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

- (a) Designating SCE as Scheduling Coordinator.
- (i) At least thirty (30) days before Initial Synchronization, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as the Scheduling Coordinator throughout the Delivery Term.
  - (ii) Throughout the Delivery Term, Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator.
- (b) Replacement of SCE as Scheduling Coordinator.
- At least forty-five (45) days before the end of the Term, or as soon as practicable before the date of any termination of this Agreement before the end of the Term, Seller shall take all actions necessary to terminate the designation of SCE as Seller's Scheduling Coordinator as of hour ending 24:00 on the last day of the Term. These actions include the following:
- (i) Seller shall submit to the CAISO a designation of a new Scheduling Coordinator for Seller to replace SCE;
  - (ii) Seller shall cause the newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
  - (iii) Seller shall inform SCE of the last date on which SCE will be Seller's Scheduling Coordinator. SCE must consent to any date other than the last day of the Term, such consent not to be unreasonably withheld.

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## 3.14 Forecasting.

Seller shall Forecast in accordance with the provisions of Exhibit D.

Seller shall use commercially reasonable efforts to Operate the Generating Facility so that the available capacity or electric energy from the Generating Facility conforms with Forecasts provided in accordance with Exhibit D.

## 3.15 Scheduled Outages.

- (a) Commencing at least sixty (60) days before Initial Synchronization and throughout the Delivery Term, Seller shall, no later than January 1, April 1, July 1 and October 1 of each year, submit to SCE, using the Web Client, Seller's schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty-four month 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 thirty (30) days after SCE's receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the CAISO.
- (e) If a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall promptly provide Notice to SCE, using the Web Client, of such change (including an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.
- (f) Seller shall promptly prepare and provide to SCE upon request, using the Web Client, all reports of actual or forecasted outages that SCE may reasonably require for the purpose of enabling SCE to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

### 3.16 Progress Reporting Toward Meeting Milestone Schedule.

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

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

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

### 3.17 Provision of Information.

As soon as reasonably practical after Seller receiving or obtaining the same, or in the time frame expressly specified below, and subject to any confidentiality or non-disclosure agreements to which Seller is bound, Seller shall provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
- (b) All applications and approvals or disapprovals relating to CEC Pre-Certification, CEC Certification, CEC Verification, any Permit and PIRP/EIRP (in the event SCE requests Seller to apply to be in PIRP/EIRP);
- (c) All material draft, preliminary, final and revised copies of reports, studies and analyses furnished by the CAISO or any Transmission Provider, and any material correspondence related thereto, concerning the interconnection of the Generating Facility to the Transmission Provider's electric system or the transmission of electric energy on the Transmission Provider's electric system;
- (d) All notifications of adjustments in the DLF and TLF, as applicable, used by the Transmission Provider in the administration of the transmission service agreement for the Generating Facility within thirty (30) days of receiving such notification from the Transmission Provider; and
- (e) All Solar Resource Evaluation Reports, and any revisions thereto, for the time period beginning on the Effective Date and ending on the last day of the first Term Year;
- (f) Any material reports, studies or assessments of the Generating Facility prepared for Seller by an independent engineer; *provided*, that Seller may redact the portion of such reports, studies or assessments that contain proprietary information, but only to the extent that such redaction does not

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materially impact SCE, Seller, the Generating Facility, or SCE's or Seller's rights or obligations under this Agreement;

- (g) All Generating Facility and metering information as may be requested by SCE, including the following, at least thirty (30) days before Initial Synchronization:

For each CAISO Approved Meter:

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

For the Generating Facility:

- (1) Utility transmission/distribution one line diagram;
- (2) Physical location, address or descriptive identification;
- (3) Latitude and longitude of the centroid of the Generating Facility and all Meteorological Equipment;
- (4) Telephone number on site;
- (5) Telephone number of control room;
- (6) Telephone number for operational issues; and
- (7) Telephone number for administrative issues; and

- (h) No later than January 31<sup>st</sup> of each year, a report listing:
- (i) The race, ethnicity and gender of Seller's employees, including senior officers and members who are natural persons, if any; and
  - (ii) All WMDVBES that supply goods or services to Seller during the previous calendar year, including any certifications or other documentation of such WMDVBES' status as such.

### 3.18 SCE's Access Rights.

Upon providing at least one (1) Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Seller hereby grants SCE, during normal business hours, the right of ingress and egress to examine the Site, the Potential Sites (if SCE's request to access and examine the Potential Sites is made before Seller selects the Site in accordance with Section 3.09(a)), and the Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or SCE's tariff schedules and rules on file with the CPUC; *provided*, that SCE shall observe all applicable Project safety rules that Seller has communicated to SCE; *provided further*, that SCE shall indemnify Seller for the actions of its authorized agents, employees, contractors, inspectors and other representatives for harm or liabilities caused by SCE, such authorized individuals or such activities while such authorized individuals are at the Site, the Potential Site or Generating Facility.

Notwithstanding anything to the contrary set forth in this Section 3.18, in the case of an Emergency which, in SCE's reasonable discretion, requires SCE to examine the Site or the Generating Facility, the Notice requirements of this Section 3.18 do not apply.

### 3.19 Obtaining and Maintaining CEC Certification, and CEC Verification.

Seller shall take all necessary steps, including making or supporting timely filings with the CEC, to obtain and maintain CEC Pre-Certification and CEC Certification and CEC Verification throughout the Delivery Term.

### 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 to deliver Product to SCE at the Delivery Point or to meter the Metered Amounts.

### 3.21 Payments and Invoicing.

Throughout the Delivery Term, Seller shall issue Payment Invoices and pay SCE in accordance with Exhibit E.

### 3.22 Lost Output Report.

#### (a) Monthly Report; SCE Review.

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

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



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

(b) Disputes of Lost Output.

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

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

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

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

(c) Product Replacement Damage Amount Calculation.

The Lost Output amount that will be used by SCE in the Product Replacement Damage Amount calculation, set forth in Exhibit F, will be the amount calculated pursuant to Exhibit M or otherwise resolved pursuant to Section 3.22(b).

3.23 Actual Availability Report.

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

This report must be in the form set forth in Exhibit S and must 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.

### 3.24 Seller's Provision of Historic Solar 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 before Initial Synchronization.

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

- (b) Data Parameters.

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

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

- (c) Format of Data.

Seller shall provide the data:

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

### 3.25 NERC Electric System Reliability Standards.

Throughout the Delivery Term, Seller shall be:

- (a) Responsible for complying with any NERC Reliability Standards applicable to the Generating Facility, including registration with NERC as the Generator Owner and Generator Operator for the Generating Facility or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by NERC, WECC or the CAISO to demonstrate compliance with the NERC Reliability Standards; and
- (b) Liable for all penalties assessed by NERC (through WECC or otherwise) for violations of the NERC Reliability Standards by the Generating Facility or Seller, as Generator Owner and Generator Operator or other applicable category.

However, if Seller learns that NERC (through WECC or otherwise) is considering or intends to assess Seller with a penalty that Seller believes is attributable to SCE's

actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the potential assessment, Seller shall provide SCE with sufficient notice to allow SCE to take part in administrative processes, discussions or settlement negotiations with NERC, WECC or other entity arising from or related to the alleged violation or possible penalty. If the penalty is nonetheless assessed in spite of SCE’s participation in the processes, discussions or settlement negotiations, or SCE waives its right to take part in the processes, discussion or settlement negotiations, SCE shall reimburse Seller for the penalty to the extent that:

- (i) It was solely caused by SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the violation; and
- (ii) Seller can establish to SCE’s reasonable satisfaction that the penalty was actually assessed against Seller by NERC and paid by Seller to NERC.

3.26 Application of Prevailing Wage.

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

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

**ARTICLE FOUR. SCE's OBLIGATIONS****4.01 Obligation to Pay and Invoice.**

- (a) SCE shall provide information to Seller regarding CAISO Revenues, CAISO Costs, CAISO Sanctions, and SCE Penalties and shall pay Seller, all in accordance with this Article Four, Exhibit E and Exhibit Q.
- (b) Throughout the Delivery Term, SCE shall purchase Product generated by the Generating Facility and delivered at the Delivery Point in accordance with this Agreement, CAISO Tariff Protocols and Applicable Law, provided, subject to Sections 4.02 and 4.03, SCE has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including:
  - (i) An outage of the Generating Facility;
  - (ii) A Force Majeure under Article Five; or
  - (iii) A reduction or curtailment of deliveries in accordance with Sections 3.12(f) or (g).
- (c) SCE will not be obligated to pay Seller for any Product that Seller delivers in violation of Sections 3.12(f) or (g), including but not limited to any energy Seller delivers in excess of the amount specified in any OSGC Order or RTOSGC Order, and Seller shall pay all CAISO Sanctions and CAISO Costs associated with such deliveries, and SCE shall retain all CAISO Revenues associated with such deliveries.

4.02 [Intentionally omitted]

**4.03 Obligations Under MRTU or Equivalent Successor Market.**

- (a) [Intentionally omitted]
- (b) If SCE Bids the Forecast-Derived Energy into the Day-Ahead Market and the CAISO awards a Schedule as a result of that Bid:
  - (i) subject to Section 4.03(b)(ii), SCE shall pay Seller for the Metered Amounts in accordance with Exhibit E; and
  - (ii) SCE shall have the right, but not the obligation, to order Seller to curtail the delivery of energy (an "Over-Schedule Generation Curtailment Order" or "OSGC Order") in excess of a Schedule awarded pursuant to this Section 4.03(b) (the "Over-Schedule Generation Curtailment Quantity" or "OSGC Quantity"). SCE shall pay Seller the Product Price, as adjusted by the Product Payment Allocation Factor, for the OSGC Quantity Seller would have been able to deliver but for the fact that SCE issued an OSGC Order. (The amount of energy that could have been delivered will be determined in

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accordance with Section 3.22 and Exhibit M, "Sellers Estimate of Lost Output".) The OSGC Quantity is not Curtailed Product.

- (c) If no Schedule is awarded for the Forecast-Derived Energy in the Day-Ahead Market, (unless a Schedule is awarded in the Real-Time Market in response to a Bid under Section 4.03(d) or Section 4.03(e)) then, so long as Seller's Actual Availability Report establishes that the Generating Facility would have been able to deliver but for the fact a Schedule was not awarded (or with respect to any RTOSGC Quantity):
- (i) For any non-On-Peak hours (as set forth in Exhibit K), if the Day-Ahead Price is zero dollars (\$0) or greater than zero dollars (\$0) (a positive price), then SCE will pay Seller the Product Price, as adjusted by the Product Payment Allocation Factor, for the Curtailed Product; or
  - (ii) For any non-On-Peak hours (as set forth in Exhibit K), if the Day-Ahead Price is less than zero dollars (\$0) (a negative price), then:
    - (1) if the total amount of Curtailed Product in a Term Year is less than the Curtailment Cap, SCE shall have no payment obligation to Seller for Curtailed Product in that Term Year; or
    - (2) if the total amount of Curtailed Product in a Term Year is greater than the Curtailment Cap, SCE will pay Seller the Product Price, as adjusted by the Product Payment Allocation Factor, for the amount of Curtailed Product greater than the Curtailment Cap in that Term Year. The amount of Curtailed Product paid for by SCE under this Section 4.03(c)(ii)(2) will be included in Banked Curtailed Energy.
  - (iii) For any On-Peak hours (as set forth in Exhibit K), SCE will pay Seller the Product Price, as adjusted by the Product Payment Allocation Factor, for the amount of such Curtailed Product.
    - (1) If the Day-Ahead Price is zero dollars (\$0) or greater than zero dollars (\$0) (a positive price), the amount of Curtailed Product paid for by SCE under this Section 4.03(c)(iii) will not apply toward the Curtailment Cap, and will not be included in Banked Curtailed Energy.
    - (2) If the Day-Ahead Price is less than zero dollars (\$0) (a negative price), the amount of Curtailed Product paid for by SCE under this Section 4.03(c)(iii) will not apply toward the Curtailment Cap, and will not be included in Banked Curtailed Energy.
- (d) Seller may instruct SCE to submit a Bid in the Real-Time Market for the Unawarded Energy; *provided,*

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- (i) Seller's instructions must be submitted prior to 6:00 p.m. PPT on the day before the operating day, and
- (ii) such instructions will specify for each hour of the applicable operating day either:
  - (1) a single price in dollars per MWh for each hour, or
  - (2) that SCE shall Bid the Unawarded Energy as Price Taker.

If a Schedule is awarded by CAISO for that Bid, then Seller shall generate and deliver energy to the Delivery Point and:

- (iii) if the Real-Time Price for the energy delivered under this Section 4.03(d) is zero dollars (\$0) or greater than zero dollars (\$0) (a positive price), then SCE shall pay Seller for the Metered Amounts in accordance with Exhibit E; or
  - (iv) if the Real-Time Price for the energy delivered under this Section 4.03(d) is less than zero dollars (\$0) (a negative price), then SCE shall pay Seller for the Metered Amounts in accordance with Exhibit E and Seller shall pay any CAISO Costs associated with that negative price.
- (e) Notwithstanding an instruction from Seller pursuant to Section 4.03(d) to Bid the Unawarded Energy in the Real-Time Market, SCE shall have the right to Bid the Unawarded Energy at a price lower than the price specified by Seller pursuant to Section 4.03(d)(ii)(1). If Seller does not instruct SCE to Bid the Unawarded Energy in accordance with Section 4.03(d), then SCE may Bid all or a portion of the Unawarded Energy in the Real-Time Market. If a Bid submitted by SCE pursuant to the conditions set forth in either of the two preceding sentences is awarded a Schedule:
- (i) Seller shall generate and deliver energy to SCE at the Delivery Point. SCE shall, subject to Section 4.03(e)(ii), pay Seller for the Metered Amounts in accordance with Exhibit E, and SCE shall pay any CAISO Costs associated with the quantity of energy that was Scheduled and delivered under this Section 4.03(e); and
  - (ii) SCE shall have the right, but not the obligation, to order Seller to curtail the delivery of energy (a "Real-Time Over-Schedule Generation Curtailment Order" or "RTOSGC Order") in excess of a Schedule awarded pursuant to this Section 4.03(e) (the "Real-Time Over-Schedule Generation Curtailment Quantity" or "RTOSGC Quantity"). The RTOSGC Quantity is Curtailed Product, and SCE shall pay Seller the Product Price, as adjusted by the Product Payment Allocation Factor, for such Curtailed Product.

#### 4.04 SCE's Check Meter.

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(a) Providing Access to Seller.

Before Initial Synchronization, SCE shall provide to Seller remote access to the Check Meter through a website as specified by SCE. SCE may change the website and protocols from time to time.

(b) Testing of Check Meter.

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

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

(i) SCE shall routinely compare the Check Meter data to the CAISO Approved Meter data after adjusting the Check Meter for any compensation introduced by the CAISO into the CAISO Approved Meter.

(ii) If the deviation between the CAISO Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, SCE shall provide Notice to Seller of such deviation and the Parties will mutually arrange for a meter check or recertification of the Check Meter or CAISO Approved Meter, as applicable.

(iii) SCE will bear its own costs for any meter check or recertification of the Check Meter.

(d) Testing procedures and standards for the Check Meter will be the same as for a comparable SCE-owned revenue-grade meter. Seller has the right to have representatives present during all such tests.

4.05 Scheduling Coordinator.

Commencing on Initial Synchronization, SCE shall act as Seller's Scheduling Coordinator and carry out all duties as Scheduling Coordinator in accordance with CAISO Tariff protocols.

4.06 Termination of Scheduling Coordinator.

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

- (a) Thirty (30) days before the end of the Term;
- (b) The date of any Notice from Seller of suspension of its performance pursuant to Section 6.02; or
- (c) The date of any early termination of this Agreement.

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4.07 Exclusive Rights to Product and Cost Responsibility.

- (a) SCE has the exclusive right, at any time or from time to time, to sell, assign, convey, transfer, allocate, designate, award, report or otherwise provide any and all such Green Attributes, Capacity Attributes or Resource Adequacy Benefits conveyed by Seller to SCE during the Delivery Term to third parties; *provided*, no such action constitutes a transfer of, or a release of SCE of, its obligations under this Agreement.
- (b) Subject to Seller's obligations under this Agreement, including Sections 3.01, 3.02, 3.08, 3.12, and 3.19, SCE shall be responsible for any costs arising from or directly related to SCE's accounting for or otherwise claiming Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

4.08 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 SCE's Manager of Credit Risk 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*,
  - (i) No Event of Default has occurred and is continuing with respect to Seller; and
  - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE will retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
  - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
  - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

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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 will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party.

If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, that Party (the "Claiming Party"), will be excused from whatever performance is affected by the Force Majeure to the extent so affected, *provided*, the Claiming Party must have complied with (a) and (b) directly below.

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

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

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

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

This Section does 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 will be at the sole discretion of the Claiming Party.

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

5.03 Initial Synchronization Deadline and Commercial Operation Deadline Extension.

If the Initial Synchronization Date does not occur on or, subject to Section 1.02(b)(i), before the Initial Synchronization Deadline as the result of a Force Majeure occurring before the Initial Synchronization Deadline, then the Initial Synchronization Deadline will, subject to Section 5.05 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 the Commercial Operation Date does not occur on or, subject to Section 1.04(a)(i), before the Commercial Operation Deadline as the result of a Force Majeure occurring before the Commercial Operation Deadline, then the Commercial Operation Deadline will, subject to Sections 1.04 and 5.05 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 [Intentionally omitted.]

5.05 Termination.

Either Party may terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is provided, if an event of Force Majeure extends for more than three hundred sixty-five (365) consecutive days which materially and adversely affects the operations of the Claiming Party, or the Generating Facility is destroyed or rendered inoperable by a Force Majeure, and an independent, third party engineer determines in writing that the Generating Facility cannot be repaired or replaced within an aggregate period of twenty-four (24) months after the first day of such Force Majeure.

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

## ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

### 6.01 Events of Default.

An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) With respect to either Party:
  - (i) Any express representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature; *provided*, that if:
    - (1) The misrepresentation or breach of warranty is capable of a cure, an Event of Default will be deemed to occur if the misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice to the Defaulting Party; or
    - (2) The misrepresentation or breach of warranty is not capable of a cure, but the Non-Defaulting Party's damages resulting from the inaccuracy can reasonably be ascertained, an Event of Default will be deemed to occur if the payment of such damages is not made within ten (10) Business Days after a Notice of these damages is provided to the Defaulting 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 specified below or to the extent excused by a Force Majeure), if this failure is not remedied within thirty (30) days after Notice of the failure, which Notice sets forth in reasonable detail the nature of the failure; *provided*, if the failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party will have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure the failure, so long as the Party promptly commences and diligently pursues the cure;
  - (iii) A Party fails to make when due any payment required under this Agreement and this failure is not cured within five (5) Business Days after Notice of the failure;
  - (iv) A Party becomes Bankrupt; or
  - (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of that Party under this Agreement either by operation of

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law or pursuant to an agreement reasonably satisfactory to the other Party.

- (b) [Intentionally omitted.]
- (c) With respect to Seller:
  - (i) Seller fails to post and maintain the Development Security pursuant to Section 3.06(a) and 3.06(b) and the failure is not cured within three (3) Business Days after Notice from SCE;
  - (ii) Seller fails to post and maintain the Performance Assurance pursuant to Section 8.02, and such failure is not cured within three (3) Business Days after Notice from SCE;
  - (iii) Initial Synchronization occurs before the Forecasted Initial Synchronization Date or after the Initial Synchronization Deadline;
  - (iv) Commercial Operation does not occur before the Commercial Operation Deadline;
  - (v) Except as permitted in Section 10.05, Seller does not own the Generating Facility;
  - (vi) Seller does not have Site Control in accordance with Section 3.09 and Seller has not cured this failure within sixty (60) days after the occurrence of the event which results in the failure;
  - (vii) The sum of Qualified Amounts plus Lost Output in any consecutive six (6) month period is not at least ten percent (10%) of the Expected Term Year Net Energy Production, and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for the failure to meet the ten percent (10%) minimum;
  - (viii) Seller intentionally or knowingly Forecasts or delivers, or attempts to Forecast or deliver, at the Delivery Point for sale under this Agreement electric energy that was not in fact generated by the Generating Facility;
  - (ix) Seller installs generating capacity in excess of the Contract Capacity and attempts to sell the output of such excess capacity to any Person, including SCE, and such excess generating capacity is not removed within five (5) Business Days after Notice from SCE;
  - (x) Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from SCE;

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- (xi) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(g);
- (xii) Except where there has been a change in Applicable Laws that would affect Seller's status as an ERR, and Seller has made commercially reasonable efforts in accordance with Section 10.02(c) to comply with the change in law, the Generating Facility fails to qualify as an ERR;
- (xiii) Except where there has been a change in law that would affect the eligibility of electric energy to qualify as renewable energy for the purposes of the RPS Legislation and Seller has made commercially reasonable efforts in accordance with Section 10.02(c) to comply with the change in law, any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as eligible renewable energy for purposes of the RPS Legislation;
- (xiv) A termination of, or cessation of service under, any agreement necessary for Seller or the Interconnecting Affiliate:
  - (1) To interconnect the Generating Facility to the Transmission Provider's electric system;
  - (2) To transmit the electric energy on the Transmission Provider's electric system; or
  - (3) To comply with the CAISO Tariff;
- (xv) A termination of or cessation of service under, the Shared Facilities Agreement, the Interconnection Assignment Agreement or the Interconnection Agreement;
- (xvi) Subject to Section 1.13, Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit as specified in Section 3.01;
- (xvii) Except for Credit and Collateral Requirements in Article Eight for which there is a separate Event of Default specified in this Section 6.01, Seller fails to satisfy the Credit and Collateral Requirements in Article Eight and the failure is not cured within five (5) Business Days after Notice from SCE;
- (xviii) The occurrence and continuation of a default, event of default or other similar condition or event (after the expiration of any applicable cure period) under any loan agreement of Seller or, if applicable, the Portfolio Financing Entity, with any Lender, or any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness in an amount greater than Twenty-Five Million Dollars (\$25,000,000) under those agreements or instruments

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- becoming immediately due and payable; *provided*, that if Seller, SCE and a Lender have entered into the Collateral Assignment Agreement and the terms of the Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(xviii), the provisions of the Collateral Assignment Agreement control;
- (xix) Except as permitted in Section 10.05, the stock or equity ownership interest in, or the assets of Seller or, if applicable, the Portfolio Financing Entity, has been pledged or assigned as collateral or otherwise to any party other than Lender;
  - (xx) Seller, the Interconnecting Affiliate or the Interconnection Sharing Affiliate withdraws the Interconnection Queue Position;
  - (xxi) Except as set forth in Section 2.02(b), Seller transfers or assigns its rights under the Interconnection Agreement;
  - (xxii) Except as set forth in Section 2.02(b), the Interconnecting Affiliate assigns or transfers the Interconnection Queue Position;
  - (xxiii) Except as set forth in Section 2.02(b), Seller, the Interconnecting Affiliate or the Interconnection Sharing Affiliate assigns or transfers the Shared Facilities Agreement or the Interconnection Assignment Agreement (or any of Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights, interests or obligations under the Shared Facilities Agreement or the Interconnection Assignment Agreement);
  - (xxiv) Except as set forth in Section 2.02(b), Seller, the Interconnecting Affiliate or the Interconnection Sharing Affiliate assigns or transfers any agreement (or any of Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights, interests or obligations thereunder) relating to Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights to use the Interconnection Queue Position or to interconnect under the Interconnection Agreement;
  - (xxv) The Shared Facilities Agreement or Interconnection Assignment Agreement is amended or otherwise revised without the consent of SCE;
  - (xxvi) The occurrence and continuation of a default under the Shared Facilities Agreement, the Interconnection Agreement, the Interconnection Assignment Agreement, or any other agreement relating to Seller's, the Interconnecting Affiliate's or the Interconnection Sharing Affiliate's rights to use the Interconnection Queue Position or to interconnect under the Interconnection Agreement, if such default (1) is not cured during any applicable cure

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period set forth in the Shared Facilities Agreement, the Interconnection Agreement, the Interconnection Assignment Agreement or such other agreement, as applicable, and (2) materially impacts SCE's rights or interests or Seller's obligations under this Agreement; or

(xxvii) The Portfolio Financing Entity becomes Bankrupt.

#### 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 the 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") has the right:

- (a) To designate by Notice, which will be effective five (5) Business Days after the Notice is given, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date"); *provided*, a Non-Defaulting Party's right to terminate this Agreement pursuant to this Section 6.02(a) may only be exercised within one hundred and eighty (180) days from the date that the default giving rise to the applicable Event of Default is no longer continuing, or, if no cure period is provided for, from the date the Non-Defaulting Party becomes aware of the Event of Default; and
- (b) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this Agreement, including performance under Section 3.01(f) but excluding the obligation to post and maintain Development Security and Performance Assurance in accordance with Section 3.06 or Article Eight.

#### 6.03 Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment.

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

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



**ARTICLE SEVEN. LIMITATIONS OF LIABILITIES**

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL 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 12.04, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

DIRECT DAMAGES INCLUDE THE VALUE OF ANY FEDERAL TAX CREDITS SELECTED IN SECTION 1.12 (a), (b), OR (c), DETERMINED ON AN AFTER-TAX BASIS, THAT ARE LOST BY SELLER DUE TO AN EVENT OF DEFAULT BY SCE WHERE SELLER PROVIDED NOTICE OF EARLY TERMINATION TO SCE IN ACCORDANCE WITH SECTION 6.02(a) AND SELLER HAS NOT BEEN ABLE TO MITIGATE THAT LOSS AFTER USE OF REASONABLE EFFORTS.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 10.03 (INDEMNITY), NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN

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*RAP ID #5494, McCoy Solar, LLC*

ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED  
HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR  
LOSS.

NOTHING IN THIS ARTICLE PREVENTS, OR IS INTENDED TO PREVENT SCE  
FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO  
ANY DEVELOPMENT SECURITY, OR PERFORMANCE ASSURANCE.

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

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## ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS

### 8.01 Financial Information.

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

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## 8.02 Development Security and Performance Assurance.

### (a) Posting Performance Assurance.

On or before the Commercial Operation Date, Seller shall post Performance Assurance with SCE, and Seller shall maintain such Performance Assurance with SCE until this Agreement has been terminated (whether such termination is due to the expiration of the Term or the result of an early termination of this Agreement) and thereafter until such time as Seller has satisfied all monetary obligations which survive such termination of this Agreement, not to exceed one (1) year following such termination of this Agreement.

Seller's obligation to maintain the Performance Assurance, as set forth in the immediately preceding paragraph, includes its obligation to replenish the Performance Assurance to the full Performance Assurance Amount in the event SCE draws on the Performance Assurance; *provided*, that once this Agreement has terminated (whether such termination is due to the expiration of the Term or the result of an early termination of this Agreement), Seller shall have no obligation to replenish the Performance Assurance, but shall continue to be obligated to maintain the Performance Assurance as set forth in the first paragraph of this Section 8.02(a).

The Performance Assurance Amount due to SCE by Seller will be as set forth in Section 1.08.

The Performance Assurance Amount must be either in the form of cash or Letter of Credit acceptable to SCE; *provided*, 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 at that time 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 3.06 and Exhibit L, after which Seller shall be obligated to post the full Performance Assurance Amount.

### (b) Letters of Credit.

Development Security and Performance Assurance provided in the form of a Letter of Credit must be subject to the following provisions:

- (i) Each Letter of Credit must 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 Development Security or Performance Assurance acceptable to SCE at least twenty (20) Business Days before 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 Development Security or Performance Assurance acceptable to SCE within three (3) Business Days after such refusal;
- (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Development Security or Performance Assurance acceptable to SCE, in each case on or before the third (3<sup>rd</sup>) Business Day after the occurrence thereof.
- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then SCE may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

In addition, SCE will have the right to draw on the Letter of Credit for any of the following reasons:

- (1) The Letter of Credit will expire in fewer than twenty (20) Local Business Days and Seller has not provided SCE alternative Development Security or Performance Assurance acceptable to SCE;
- (2) The Seller or the issuer of the Letter of Credit has provided written notice to SCE of either Seller's or the issuer's intent not to renew the Letter of Credit following the present expiration date thereof ("Notice of Non-Renewal"), and Seller has failed to provide SCE with a replacement Letter of Credit satisfactory to SCE in its sole discretion within thirty (30) days following the date of the Notice of Non-Renewal; or

- (3) SCE has not been paid any or all of Seller's payment obligations due and payable under this Agreement or the Shared Facilities Agreement.

Cash proceeds received by SCE from drawing upon the Letter of Credit pursuant to this Section 8.02(b)(iv) (except item (3) above for payment obligations due and payable) will be deemed Development Security or Performance Assurance (as applicable) as security for Seller's obligations to SCE and SCE will 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:

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

**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 3.06 and 8.02 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take all action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where SCE is authorized to retain all or a portion of the Development Security or Performance Assurance, SCE may do any one or more of the following:

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- (a) Exercise any of its rights and remedies with respect to the 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 or Performance Assurance (as applicable) then held by or for the benefit of SCE free from any claim or right of any nature whatsoever of Seller.

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 remains liable for any amounts owing to SCE after such application), subject to SCE's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

#### 8.04 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of SCE with respect to the Security Interest provided for herein and therein.
- (b) Seller may not cause or permit the stock, equity ownership interest in Seller or assets of Seller to be pledged or assigned as collateral or otherwise to any Person other than Lender.
- (c) Seller may 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 or financing of the development, construction or Operation of the Generating Facility.
- (d) Except for Permitted Liens, Seller may not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other Person, any lien on Seller's interest (or any part thereof) in this Agreement, the Site or the Generating Facility.

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

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- 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.
- (e) Seller may 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.
  - (f) Seller may not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary; *provided*, that Seller's ownership interest in the Interconnecting Affiliate is explicitly permitted under the terms of this Agreement and shall not constitute of breach of this covenant; *provided further*, that the Interconnection Affiliate shall not conduct any business or activity other than as permitted under this Agreement, the Interconnection Agreement, the Shared Facilities Agreement and the Interconnection Assignment Agreement.
  - (g) During any period during which Seller is a Defaulting Party, Seller may not:
    - (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or
    - (ii) Otherwise make any distribution or payment to any Affiliate of Seller other than payments in the ordinary course of business for the fair market value of goods or services provided to Seller that are necessary to Operate the Generating Facility.
  - (h) Seller may not allow the Portfolio Financing Entity to cause or permit the stock or equity ownership interest in the Portfolio Financing Entity or the assets of the Portfolio Financing Entity to be pledged or assigned as collateral or otherwise to any Person other than a Lender.
  - (i) At any time during the Term, Seller may not cause or permit, and may not allow the Portfolio Financing Entity to cause or permit, the Generating Facility to be included in more than one Portfolio at the same time.
  - (j) Seller shall, and shall cause the Portfolio Financing Entity, to assure that the Portfolio is in compliance with the requirements set forth in the definition of "Portfolio" in Exhibit A at all times during the Term.

#### 8.05 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:

- (a) 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

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- (b) Will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Eight of this Agreement;

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

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

**ARTICLE NINE. GOVERNMENTAL CHARGES**

9.01 Cooperation to Minimize Tax Liabilities.

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

9.02 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Metered Amounts (and any contract associated with the Metered Amounts) arising before 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. If Seller is required by law or regulation to remit or pay Governmental Charges which are SCE’s responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges.

If SCE is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct such amounts from monthly Product Payments to Seller made pursuant to Exhibit E.

If SCE elects not to deduct such amounts from Seller’s monthly Product Payments, Seller shall promptly reimburse SCE for such amounts upon SCE’s Payment Invoice request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which that Party is exempt under the law.

9.03 Providing Information to Taxing Authorities.

Subject to Section 10.10 and the Non-Disclosure Agreement, 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 and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) Except for CPUC Approval in the case of SCE, and all Permits in the case of Seller, it has, or will timely acquire, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform under this Agreement;
- (f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (g) It is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
- (h) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
- (i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of the Product as contemplated in this Agreement.

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

- (a) Seller hereby covenants to SCE that throughout the Delivery Term:
  - (i) Subject to Section 10.05, Seller shall own and Operate the Generating Facility;

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- (ii) Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;
  - (iii) Seller shall hold the rights to all Green Attributes, Capacity Attributes and Resource Adequacy Benefits, which Seller has conveyed and has committed to convey to SCE hereunder;
  - (iv) Seller shall obtain, maintain and remain in compliance with all Permits, interconnection agreements and transmission rights necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point;
  - (v) Subject to Section 1.13, Seller shall take all actions necessary for the Project to qualify and be certified by the CEC as an ERR; and
  - (vi) Subject to Section 1.13, Seller shall take all actions necessary for the Product delivered to SCE to qualify under the requirements of the California Renewables Portfolio Standard.
- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:
- (i) The Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
  - (ii) The Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.

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

- (c) 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) The term "commercially reasonable efforts" as used in Section 10.02(b) and Section 10.02(c) means efforts consistent with and subject to Section 1.13.

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- (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.
- (f) Seller hereby represents and warrants that, as of the Effective Date, it has no knowledge of any plans by SCE or another Transmission Provider to seek to construct a transmission or distribution line through or on the Potential Sites.
- (g) Seller represents and warrants that it has delivered to SCE a true, complete and fully-executed copy of each of the Shared Facilities Agreement, the Interconnection Assignment Agreement, and the Interconnection Agreement, each as in effect on the Effective Date and attached to this Agreement as Exhibit P, Exhibit O, and Exhibit R, respectively.

**10.03 Indemnity.****(a) SCE's Indemnification Obligations.**

In addition to any other express indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 10.03(a), SCE releases, and shall indemnify, defend and hold harmless Seller, and Seller's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with:

- (i) any breach made by SCE of its representations or warranties in Sections 10.01 and 10.02;
- (ii) SCE's indemnification obligations under Section 3.18; or
- (iii) so long as Seller has fully complied with the Generator Operator Obligations and Generator Owner Obligations, any NERC Standards Non-Compliance Penalties which are solely due to SCE's negligence in performing its role as Seller's Scheduling Coordinator throughout the Delivery Term.

This indemnity applies notwithstanding Seller's active or passive negligence. However, Seller will not be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

**(b) Seller's Indemnification Obligations.**

In addition to any other express indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 10.03(b), Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, including claims arising from a breach of Section 10.02(b), indirect or consequential loss or damage of such third-party), arising out of or in connection with:

- (i) any breach made by Seller of its representations, warranties or covenants in Sections 10.01 and 10.02;
- (ii) Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02;
- (iii) NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against SCE, except to the extent solely due to SCE's negligence in performing its role as Seller's Scheduling Coordinator throughout the Delivery Term;
- (iv) injury or death to any individuals, including SCE employees, and physical damage to property, including SCE property, where the damage arises out of, is related to, or is in connection with, Seller's obligations or performance under this Agreement;
- (v) injury or death to any individuals or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.11; *provided*, the inclusion of this Section 10.03(b)(v) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 10.11;
- (vi) any breach by Seller of the covenants set forth in Section 2.06(b); or
- (vii) SCE's exercise of its rights under this Agreement, where such exercise results in legal action by the Interconnecting Affiliate or the Interconnection Sharing Affiliate against SCE.

This indemnity applies notwithstanding SCE's active or passive negligence. However, SCE will not be indemnified under Section 10.03(b)(i) through Section 10.03(b)(iv) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

- (c) Mutual Indemnification.

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Each Party shall indemnify, defend and hold harmless the other Party and the other Party's directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees (including costs of in-house counsel) and other costs of litigation, arbitration or mediation), arising out of or in connection with a Party's failure to pay any Governmental Charges for which such Party is responsible under Article Nine.

(d) Indemnification Claims.

All claims for indemnification by a Party entitled to be indemnified under this Agreement (an "Indemnified Party") by the other Party (the "Indemnitor") will be asserted and resolved as follows:

- (i) If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give Notice to the Indemnitor; *provided*, failure to provide this Notice will relieve Indemnitor only to the extent that the failure actually prejudices Indemnitor.
- (ii) Indemnitor will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but can not admit any liability or enter into any settlement without Indemnified Party's approval.
- (iii) Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; *provided*, if counsel is employed due to a conflict of interest or because Indemnitor does not assume control of the defense, Indemnitor will bear the expense of this counsel.

(e) Survival of Indemnification Rights and Obligations.

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

10.04 Assignment.

(a) General Assignment.

Except as provided in Section 10.04(b) and Section 10.05, neither Party (and, in the case of Seller, the Portfolio Financing Entity, if applicable) can assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(b) Assignment in Connection with a Change of Control.

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Any direct or indirect change of control of Seller or, if applicable, the Portfolio Financing Entity (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent shall not be unreasonably withheld; *provided*, that SCE's consent is not required for:

- (i) a sale, assignment, pledge or other transfer of all or substantially all of the assets of NextEra or the Ultimate Parent if, after giving effect thereto, the transferee remains the direct or indirect owner of a majority of the shares of or equity interests in Seller and maintains the power to direct or cause the direction of the management or policies of Seller;
- (ii) any direct or indirect sale, assignment, pledge or other transfer of shares of or equity interests in Seller if, after giving effect thereto, NextEra or the Ultimate Parent remains the direct or indirect owner of a majority of the shares of or equity interests in Seller and maintains the power to direct or cause the direction of the management or policies of Seller;
- (iii) a merger, consolidation, amalgamation, reorganization or similar transaction of a Person with or into NextEra or the Ultimate Parent; or
- (iv) a sale, assignment, pledge or other transfer of all or substantially all of the shares or equity interests of NextEra or the Ultimate Parent if, after giving effect thereto, NextEra or the Ultimate Parent remains the direct or indirect owner of a majority of the shares of or equity interests in Seller and maintains the power to direct or cause the direction of the management or policies of Seller.

Seller shall provide SCE Notice of any assignment permitted under this Section 10.04(b) within ten (10) Business Days after such assignment, which Notice shall include an amended Exhibit C revised as necessary to update Seller's contact information; *provided*, that if any such revision to Exhibit C will have a material impact on SCE's or Seller's obligations or performance under this Agreement, Seller shall provide Notice to SCE of such revisions to Exhibit C within three (3) Business Days after such assignment.

#### 10.05 Consent to Collateral Assignment.

Subject to the provisions of this Section 10.05, Seller and the Portfolio Financing Entity, if applicable, has the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility.

In connection with any financing or refinancing of the Generating Facility by Seller or the Portfolio Financing Entity, SCE, Seller and Lender shall use commercially reasonable efforts to enter into a consent to collateral assignment agreement substantially in the form attached to this Agreement as Exhibit I (the "Collateral



Assignment Agreement”); *provided*, if requested, the Collateral Assignment Agreement shall be modified to include terms reasonably requested by Lender or Seller and acceptable to SCE in its commercially reasonable discretion.

## 10.06 Abandonment.

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

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

## 10.07 Governing Law.

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

## 10.08 Notices.

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

Notices (other than Forecasts, scheduling requests and curtailment (or equivalent) instructions) must, 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 (or equivalent orders) may be oral or written and must be made in accordance with accepted industry practices for such notices.

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

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

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- (d) Notices of curtailment (or equivalent orders) may be oral, written, or electronic and will be effective upon receipt by Seller.

Notices will 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, invoices, statements or payments for this Generating Facility must reference the RAP ID.

#### 10.09 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement will be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement does not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement, including to Lenders under the terms of this Agreement, including Section 10.05).
- (e) Waiver by a Party of any default by the other Party may not be construed as a waiver of any other default.
- (f) The term "including" when used in this Agreement is by way of example only and may not be considered in any way to be in limitation.
- (g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (i) Where days are not specifically designated as Business Days, they will be considered as calendar days.
- (j) This Agreement is binding upon and shall inure to the benefit of on the Parties and each Party's successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering,

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scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

- (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 also refers to any successor to such law, tariff or organization.
- (m) SCE has assigned a RAP ID number to this Agreement for tracking purposes only.
- (n) SCE's obligation to take and pay for electric energy produced by the Generating Facility, together with Green Attributes, Resource Adequacy Benefits and Capacity Attributes associated therewith, will not be affected by any change to or elimination of the RPS Legislation.
- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the Bankruptcy Code.
- (p) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.
- (q) Each Party shall act in good faith in its performance under this Agreement.
- (r) All dollar amounts set forth in this Agreement are in U.S. dollars.

## 10.10 Confidentiality.

### (a) Terms and Conditions of this Agreement.

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

- (i) To such Party's, or its upstream parents' (which, in the case of SCE, is Edison International), employees, Lenders, counsel, accountants, advisors or investors, in each case who have a need to know such information and have agreed to keep such terms confidential;
- (ii) To potential Lenders with the consent of SCE, which consent will not be unreasonably withheld; *provided*, disclosure:

- (1) Of cash flow and other financial projections to any potential Lender in connection with a potential loan or tax equity investment; or
- (2) Of Confidential Information to potential Lenders with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding,

does not require SCE's consent, and provided further that, in each case such potential Lender has a need to know this information and has agreed to keep such terms confidential;

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

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or ownership of Green Attributes associated with the Generating Facility;

- (x) To representatives of a Party's credit ratings agencies:
  - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes and have agreed to keep this information confidential; or
  - (2) 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 before disclosing the Confidential Information; and
  - (2) Prevent or limit such disclosure.

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

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

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

(b) Non-Disclosure Agreement.

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

Information provided by the Parties pursuant to this Agreement will be subject to the Non-Disclosure Agreement, or to any other agreement that the Parties negotiate to provide reasonable protection for their confidential business information or trade secrets.

- (ii) Notwithstanding Section 1 of the Non-Disclosure Agreement, the term "Confidential Information" as used in the Non-Disclosure Agreement (and incorporated herein) shall be deemed to include (in addition to the information described in the Non-Disclosure Agreement) this Agreement and all oral or written communications exchanged between the Parties pursuant to this Agreement, except for communications and information described in Section 4 of the Non-Disclosure Agreement.
  - (iii) Confidential Information may only be used for the purposes set forth under the Non-Disclosure Agreement and for the purpose of implementing and enforcing this Agreement.
- (c) RPS Confidentiality.
- Notwithstanding Section 10.10(a), at any time on or after the Effective Date, either Party shall be permitted to disclose the following terms with respect to this Agreement:
- (i) Party names;
  - (ii) ERR type;
  - (iii) Term;
  - (iv) Generating Facility location;
  - (v) Contract Capacity;
  - (vi) Forecasted Commercial Operation Date;
  - (vii) Delivery Point; and
  - (viii) Generating Facility's expected energy deliveries.

## 10.11 Insurance.

- (a) Starting on the Effective Date and throughout the Delivery Term of this Agreement and for such additional periods as may be specified below, Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified below, and such additional coverage as may be required by applicable law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A:VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.
  - (i) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
  - (ii) Employer's Liability Insurance with limits of not less than:

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- (1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident
  - (2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
  - (3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee
- (iii) Commercial General Liability Insurance, (which, except with the prior written consent of SCE and subject to subsections 10.11(a)(iii)(1) and 10.11(a)(iii)(2) below, shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than One Million dollars (\$1,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.
- If Seller elects, with SCE’s written concurrence, such concurrence not to be unreasonably withheld, to use a “claims made” form of Commercial General Liability Insurance, then the following additional requirements apply:
- (1) The retroactive date of the policy must be prior to the Effective Date; and
  - (2) Either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates.
- (iv) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than One Million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of this Agreement.
- (v) Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than Ten Million dollars (\$10,000,000) per occurrence and in the annual aggregate. The

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insurance requirements of this Section 10.11 can be provided by any combination of Seller's primary and excess liability policies.

- (b) The insurance required above shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or Operation of the Generating Facility.
- (c) At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to SCE certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to SCE. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide SCE with at least thirty (30) days' prior written notice in the event of cancellation of coverage. SCE's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 10.11 and shall not constitute a waiver of any of the requirements in this Section 10.11.
- (d) If Seller fails to comply with any of the provisions of this Section 10.11, Seller, among other things and without restricting SCE's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall defend SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, against a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

#### 10.12 Nondedication.

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



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 this service shall cease upon termination of this Agreement.

**10.13 Mobile Sierra.**

- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 10.13(b) is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall be the 'public interest' application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) (the 'Mobile Sierra' doctrine).
- (b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

**10.14 Simple Interest Payments.**

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

**10.15 Payments.**

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

**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.

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Seller also agrees that it will not, in filings, if any, made subject to FERC Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to SCE.

10.17 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 will not in any way be construed to mean that such Required Material is accurate, suitable for its intended purpose, in compliance with any Applicable Law or other requirement, or endorsed for the benefit of any other party, including Seller. Further, Seller acknowledges and agrees that SCE shall have no liability to Seller or any other third party with respect to any Required Material so reviewed, approved, requested or required by SCE or on SCE's behalf.

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

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

If a Change in CAISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, then either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

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

If the Parties are unable, within sixty (60) days after the sending of the Notice requesting negotiations, either to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to mediation and arbitration as provided in Article Twelve.

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

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

**ARTICLE TWELVE. MEDIATION AND ARBITRATION**

12.01 Dispute Resolution.

Other than requests for provisional relief under Section 12.04, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, *then* for final and binding arbitration under the procedures described in Section 12.03 below.

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

12.02 Mediation.

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

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

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

Unless otherwise agreed to by the Parties, the mediation will 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 will 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, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided*, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

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## 12.03 Arbitration.

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

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

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

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

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

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

Except as provided for herein, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 *et seq.* and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will 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

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use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

- (b) The initial disclosure will 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 will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will 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 if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these 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 2.06(b), 3.01, 3.02, 3.06(h), 3.09 or 10.10 of this Agreement.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, 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 will be borne by such Party),

including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

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

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to SCE and Seller a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial.

The Arbitrator shall follow the law applicable to this Agreement, as set forth in Section 10.07, and shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error.

#### 12.04 Provisional Relief

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 2.06(b), 3.01, 3.02, 3.06(h), 3.09 or 10.10 of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 12.01. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 12.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if this Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

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

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*RAP ID #5494, McCoy Solar, LLC*

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

**MCCOY SOLAR, LLC,**  
a Delaware limited liability company

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

By: 

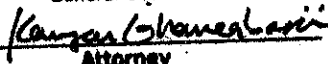
Michael O'Sullivan  
*Vice President*

By: 

Marc L. Ulrich  
*Vice President of  
Renewable and Alternative Power*

Date: September 29, 2011

Date: September 29, 2011

APPROVED  
RUSSELL C. SWARTZ  
Sr. Vice President and  
General Counsel  
By:   
Attorney  
September 29, 2011



**EXHIBITS**

**EXHIBIT A**  
*Definitions*

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

1. "AC" means alternating current.
2. "Accepted Compliance Costs" has the meaning set forth in Section 1.13.
3. "Actual Availability Report" means a report to be prepared by Seller in the form of Exhibit S containing the information described in Section 3.23.
4. "Actual Available Capacity" means the sum of the capacity, in MWs, of all Current Inverters of the Generating Facility that were available at the end of the Settlement Interval, as indicated by the Actual Availability Report.
5. "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 that Party.
6. "Agreement" has the meaning set forth in the Preamble.
7. "Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
8. "Arbitrator" has the meaning set forth in Article Twelve.
9. "Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.
10. "Availability Standards" has the meaning set forth in the CAISO Tariff.
11. "Availability Workbook" has the meaning set forth in Exhibit S.
12. "Banked Curtailed Energy" means the sum of the cumulative quantity of Curtailed Product in any Term Year (i) that exceeds the Curtailment Cap for any such Term Year, and (ii) for which SCE paid the Product Price.
13. "Bankrupt" means with respect to any entity, such entity:
  - (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it;
  - (b) Makes an assignment or any general arrangement for the benefit of creditors;
  - (c) Otherwise becomes bankrupt or insolvent (however evidenced);

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- (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.
14. "Bankruptcy Code" means the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*), as amended, and any successor statute.
  15. "Bid" has the meaning as set forth in the CAISO Tariff.
  16. "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day begins at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
  17. "Business Practice Manuals" or "BPMs" has the meaning as set forth in the CAISO Tariff.
  18. "Buyer" means Southern California Edison Company.
  19. "CAISO" means the California Independent System Operator Corporation or successor entity.
  20. "CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy produced by the Generating Facility less Station Use.
  21. "CAISO Controlled Grid" has the meaning as set forth in the CAISO Tariff.
  22. "CAISO Costs" means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement in each applicable Settlement Interval.
  23. "CAISO Markets" has the meaning as set forth in the CAISO Tariff.
  24. "CAISO Resource ID" means the number or name assigned by the CAISO to the CAISO Approved Meter.
  25. "CAISO Revenues" means the credits and other payments incurred or received by SCE as a result of energy from the Generating Facility delivered to any CAISO administered market by Seller, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.
  26. "CAISO Sanctions" means any sanctions directly assigned by the CAISO to the CAISO Resource ID for the Generating Facility or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement for each applicable Settlement Interval.

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27. "CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
28. "Calculation Period" means the twenty-four (24) month period immediately preceding the end of each Term Year commencing at the end of the second Term Year, with the first and second Term Year constituting the first Calculation Period.
29. "California Renewables Portfolio Standard" means the California Public Utilities Code Section 399.11, *et seq.*
30. "Capacity Attributes" means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility throughout the Delivery Term.
31. "CEC" means the California Energy Commission.
32. "CEC Certification" means certification by the CEC that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
33. "CEC Pre-Certification" means provisional certification of the proposed Generating Facility as an ERR by the CEC upon submission by a facility of a complete CEC-RPS-1B application and required supplemental information.
34. "CEC Verification" means verification by the CEC based on ongoing reporting by Seller 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.
35. "CFR" means the Code of Federal Regulations, as may be amended from time to time.
36. "Change in CAISO Tariff" means that, other than changes for the Market Redesign and Technology Update that became effective on April 1, 2009, the CAISO Tariff has been changed and such change has a material adverse impact on either Party, or the CAISO has been dissolved or replaced and any successor to the CAISO operates under rules, protocols, procedures or standards that differ in a material respect from the CAISO Tariff, after the Effective Date.
37. "Check Meter" means the SCE revenue-quality meter section or meter, which SCE may require at its discretion, as set forth in Section 3.08(b), and which will include those devices normally supplied by SCE or Seller under the applicable utility electric service requirements.
38. "Claiming Party" has the meaning set forth in Section 5.02.

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39. "Collateral Assignment Agreement" has the meaning set forth in Section 10.05.
40. "Commercial Operation" is the status of the Generating Facility upon Seller's satisfaction of all of the conditions set forth in Section 2.03(b) and as of the Commercial Operation Date.
41. "Commercial Operation Date" has the meaning set forth in Section 2.03(b).
42. "Commercial Operation Deadline" has the meaning set forth in Section 1.04(a).
43. "Compliance Actions" has the meaning set forth in Section 1.13.
44. "Compliance Expenditure Cap" means the dollar amount set forth in Section 1.13.
45. "Confidential Information" has the meaning set forth in Section 10.10(b)(ii).
46. "Contract Capacity" means the lesser of (i) the amount of electric energy generating capacity, set forth in Section 1.01(h), that Seller commits to install at the Site and (ii) the Demonstrated Contract Capacity.
47. "Control Area" means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.
48. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.
49. "CPUC" means the California Public Utilities Commission.
50. "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:
- (a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and
  - (b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.
- CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.
51. "Credit Rating" means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity's unsecured, senior

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long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Fitch or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligation by S&P, Fitch or Moody's, then "Credit Rating" means the general corporate credit rating or long-term issuer rating assigned by the other two ratings agencies.

52. "Current Inverters" means devices used to convert DC electric energy to AC electric energy.
53. "Curtailed and Delivered Amount" means, with respect to a Term Year, the amount of electric energy, in kWh, that is equal to the sum of (i) the Metered Amounts for such Term Year, (ii) the amount of Curtailed Product paid for by SCE during such Term Year, and (iii) the amount of curtailed Product that is paid for by SCE, whether or not such Product constitutes Curtailed Product.
54. "Curtailed Product" means energy that could have been delivered to the Delivery Point by Seller but which did not receive a Schedule in the CAISO Day-Ahead Market plus Real-Time Over-Schedule Generation Curtailment Quantity, and which Seller did not deliver to SCE. The amount of energy that could have been delivered will be determined in accordance with Section 3.22 and Exhibit M, "Sellers Estimate of Lost Output".
55. "Curtailed Product Payment" means the sum of all payments for Curtailed Product plus payments for OSGC Quantity, as set forth in Section 4.03.
56. "Curtailed Return Term" has the meaning set forth in Section 1.06(b)(ii).
57. "Curtailed Return Term Notice" has the meaning set forth in Section 1.06(b).
58. "Curtailment Cap" is the yearly quantity (Term Year), in MWh, set forth in and subject to Section 1.10.
59. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.06(c).
60. "Day-Ahead" has the meaning set forth in the CAISO Tariff.
61. "Day-Ahead Market" has the meaning set forth in the CAISO Tariff.
62. "Day-Ahead Price" means the CAISO Day-Ahead Market Locational Marginal Price in each applicable Settlement Interval for electric energy (including the energy, congestion and losses components) at the Generating Facility's PNode (as published by the CAISO) which is the pricing point used by the CAISO for settlements of this Generating Facility.
63. "DC" means direct current.
64. "DC Collection System" means the DC equipment, cables, components, devices and materials that interconnect the Photovoltaic Modules with the Current Inverters.
65. "Defaulting Party" has the meaning set forth in Section 6.01.

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66. "Delivery Point" means the point of delivery of Product to the CAISO Controlled Grid, as specified in Section 1.01(f) and set forth in the single-line diagram of the CAISO Controlled Grid interconnection attached hereto as Exhibit B-1.
67. "Delivery Term" means the period beginning with Initial Synchronization and continuing throughout the end of the Term.
68. "Demonstrated Contract Capacity" means the Generating Facility's total rated electric alternating current energy generating capacity which will equal the lesser of:
- (a) The sum of the Inverter Block Unit Capacity of all Inverter Block Units in the Generating Facility; or
  - (b) The continuous output power rating at the expected operating power factor of the step-up transformer that connects the Generating Facility to the Transmission Provider's system,
- each as determined in accordance with Exhibit L.
69. "Demonstration Date" has the meaning set forth in Exhibit L.
70. "Delivery Network Upgrades" has the meaning set forth in the CAISO Tariff.
71. "Development Security" has the meaning set forth in Section 3.06.
72. "Disclosing Party" has the meaning set forth in Section 10.10(a)(vi).
73. "Disclosure Order" has the meaning set forth in Section 10.10(a)(xii).
74. "Dispatch Instruction" has the meaning set forth in the CAISO Tariff.
75. "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.
76. "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 before the date that is ninety-one (91) days after the expiration of the Term of this Agreement.
77. "DLF" means a number that is a representation for all net electric energy losses or avoided losses, as filed by SCE at FERC, associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the CAISO Controlled Grid, also known as the distribution loss factor.
78. "Early Termination Date" has the meaning set forth in Section 6.02(a).
79. "Effective Date" has the meaning set forth in the Preamble.

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80. “Eligible Intermittent Resource Protocol” or “EIRP” means the CAISO’s intermittent resource program initially established pursuant to the CAISO Tariff or any successor program that SCE determines accomplishes a similar purpose.
81. “Emergency” means:
- (a) An actual or imminent condition or situation which jeopardizes the integrity of Transmission Provider’s electric system or the integrity of any other systems to which the Transmission Provider’s electric system is connected, as determined by the Transmission Provider in its reasonable discretion, or any condition so defined and declared by the CAISO; or
  - (b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the Transmission Provider’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
82. “Energy Communication Network” means the CAISO infrastructure network (data highway) used by all CAISO participants to exchange data to and from resources and CAISO.
83. “Energy Deviations” means the absolute value of the difference, in kWh, in any Settlement Interval between:
- (a) Forecast-Derived Energy; and
  - (b) Metered Amounts plus Curtailed Product plus OSGC Quantity.
84. “Equitable Defense” means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain equitable remedies may be pending.
85. “ERR” has the meaning set forth in Section 10.02(b)(i).
86. “Event of Default” has the meaning set forth in Section 6.01.
87. “Event of Deficient Energy Deliveries” means any instance in which Seller fails to meet Seller’s Energy Delivery Obligation as determined in accordance with Section 3.07(a)(ii), which failure results in Seller’s obligation to pay the applicable Product Replacement Damage Amount.
88. “Excess Product” has the meaning set forth in Section 1.07(a).
89. “Expected Term Year Net Energy Production” means the Generating Facility’s expected Qualified Amounts for each Term Year, as calculated in accordance with Section 1.01(i).



90. "EZ Gen Hub SP-15" means the Existing Zone Generation Trading Hub for the geographical area in which the majority of SCE's service territory is located.
91. "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.
92. "Federal Investment Tax Credit" means investment tax credit under Section 48 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to capital investment in equipment used to produce renewable electric energy from solar energy resources for which Seller, as the owner of the Generating Facility, is eligible (for Sellers that select box (a), Federal Investment Tax Credit, under Section 1.12).
93. "Federal Production Tax Credit" means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Generating Facility, is eligible (for Sellers that select box (b) or (c), Federal Production Tax Credit, under Section 1.12).
94. "Federal Tax Credit" means either Federal Investment Tax Credit or Federal Production Tax Credit.
95. "Federal Tax Credit Legislation" means validly enacted federal legislation extending the applicability and rate of the investment tax credit (26 U.S.C. § 48) to owners of certain solar facilities and combined heat and power systems using biomass to produce electric energy which are placed in service on or before Commercial Operation Deadline, on terms no less favorable to owners of solar facilities generating facilities than those available with respect to such facilities placed in service on or before January 1, 2017 pursuant to the law governing Federal Investment Tax Credits in effect as of the Effective Date.
96. "FERC" means the Federal Energy Regulatory Commission.
97. "Fitch" means Fitch Ratings Ltd. or its successor.
98. "Force Majeure" means any occurrence that was not anticipated as of the Effective Date that:
- (a) In whole or in part:
    - i) Delays a Party's performance under this Agreement;
    - ii) Causes a Party to be unable to perform its obligations; or
    - iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;

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- (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, volcanic eruptions, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority (including a change in Applicable Law but excluding Seller's compliance obligations as set forth in Section 3.19), or curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO (except as set forth below).

Force Majeure does not include:

- (d) The lack of wind, sun or other fuel source of an inherently intermittent nature;
  - (e) Reductions in generation from the Generating Facility resulting from ordinary wear and tear, deferred maintenance or Operator error;
  - (f) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the CAISO Controlled Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair; or
  - (g) Any delay in providing, or cancellation of, interconnection service by a Transmission Provider, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission Provider.
99. "Forecast" means an hourly forecast provided in accordance with Exhibit D of either:
- (a) The sum of the continuous electrical output ratings for Current Inverters (in MWs) in the Generating Facility that are operational; or
  - (b) The sum of electric energy (in MWh) expected to be generated by the Generating Facility,
- in accordance with Exhibit D.
100. "Forecast-Derived Energy" means the amount of energy in MWh expected to be generated by the Generating Facility, as determined by SCE based upon the Forecast provided by Seller in accordance with this Agreement, and as may be adjusted for any additional energy that is available pursuant to an updated Forecast submitted in accordance with Exhibit D.
101. "Forecasted Commercial Operation Date" means the date Seller anticipates, as of the Effective Date, will be the Commercial Operation Date, as set forth in Section 1.03.

102. "Forecasted Initial Synchronization Date" means the date Seller anticipates, as of the Effective Date, will be the date for Initial Synchronization, as set forth in Section 1.02(a).
103. "Forecasting" means the action of Seller in preparing and submitting the Forecasts to SCE.
104. "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 does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.
105. "Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.
106. "GAAP" means accounting principles generally accepted in the United States of America.
107. "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.
- Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, and includes the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.
- Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for this purpose in accordance with prudent industry practices.
108. "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 the facility, excluding the Site, land rights and interests in land.

109. "Generating Facility Energy Yield Curve" means a table used to estimate the Generating Facility's Metered Amounts, in kWhs, as a function of the recorded plane of array insolation, in kWh per square meter, at the Site as described in Exhibit M.
110. "Generation Management System" or "GMS" means the automated system, or its successor system, employed by SCE real time operations to remotely monitor and dispatch the Generating Facility.
111. "Generation Operations Center" or "GOC" means the location of SCE's real time operations personnel.
112. "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 NERC Reliability Standards.
113. "Generator Operator Obligations" means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards.
114. "Generator Owner" means an entity that owns the Generating Facility and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of generating units as set forth in the NERC Reliability Standards.
115. "Generator Owner Obligations" means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards.
116. "Genesis PPA" means that certain Power Purchase Agreement, dated as of September 28, 2009, by and between the Interconnection Sharing Affiliate and Pacific Gas and Electric Company, as amended.
117. "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.
118. "Governmental Charges" has the meaning as set forth in Section 9.02.
119. "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:
- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;

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- (2) Any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;<sup>1</sup>
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

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

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

120. "Green Market Price" means the market price for the Product from an ERR.

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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.

121. "Indemnified Party" has the meaning set forth in Section 10.03(d).
122. "Indemnitor" has the meaning set forth in Section 10.03(d).
123. "Initial Synchronization" means the first generating unit of the Generating Facility is operating in parallel with Seller's Transmission Provider and the first kWh of electric energy is measured by the CAISO Approved Meter or Check Meter.
124. "Initial Synchronization Date" means the date upon which Initial Synchronization occurs.
125. "Initial Synchronization Deadline" has the meaning set forth in Section 1.02(b)(ii).
126. "Installed DC Rating" means, at any time, the sum of the Photovoltaic Module DC Ratings for all Photovoltaic Modules actually installed at the Site and verified by SCE pursuant to Exhibit L, expressed in kWpDC.
127. "Interconnecting Affiliate" means NextEra Desert Center Blythe, LLC, a Delaware limited liability company.
128. "Interconnection Assignment Agreement" means that certain Assignment and Assumption of Rights to Interconnection Service under the Large Generator Interconnection Agreement, dated August 12, 2011 by and between the Interconnecting Affiliate and Seller, a copy of which is attached to this Agreement as Exhibit O.
129. "Interconnection Agreement" means that certain Large Generator Interconnection Agreement, dated August 12, 2011, by and among the Transmission Provider, the Interconnecting Affiliate and the CAISO, a copy of which is attached to this Agreement as Exhibit R, which Interconnection Agreement provides Seller with the right to interconnect the Generating Facility to the Transmission Provider's electric system.
130. "Interconnection Point" means the location where the Generating Facility first interconnects with the existing electrical transmission or distribution system, as reported on the Generating Facility's application for interconnection with the Transmission Provider's electric system, as described in Section 1.01(e).
131. "Interconnection Queue Position" is the order of Seller's valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.11.
132. "Interconnection Sharing Affiliate" means Genesis Solar, LLC, a Delaware limited liability company.
133. "Interest Rate" means, for any date:
- (a) The per annum rate of interest equal to the "Prime Rate" published in *The Wall Street Journal* under "Money Rates" or such date (or if not published on such date on the most recent preceding day on which published); plus
  - (b) Two percentage points (2%);

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- provided*, in no event may the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
134. “Inverter Block Unit” means each Current Inverter installed on the Site as part of the Generating Facility, along with the associated DC Collection Systems and Photovoltaic Modules connected to such Current Inverter.
135. “Inverter Block Unit Capacity” means, with respect to each Inverter Block Unit, the total rated electric alternating current energy generating capacity of such Inverter Block Unit, determined as the lesser of:
- (a) The manufacturer’s output rating of the Current Inverter included in such Inverter Block Unit, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplate physically attached to such Current Inverter;
  - (b) The sum of the manufacturer’s nameplate ratings of all Photovoltaic Modules included in such Inverter Block Unit, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to such individual Photovoltaic Modules; or
  - (c) The continuous power output rating at the expected operating power factor of the Inverter Block Unit’s medium voltage transformer.
136. “JAMS” has the meaning set forth in Article Twelve.
137. “kW” means a kilowatt of electric energy generating capacity.
138. “kWh” means a kilowatt-hour of electric energy.
139. “kW<sub>PDC</sub>” means peak DC power.
140. “Lease” means one or more agreements whereby Seller leases the real property of the Site from a third party, the term of which lease begins on or before the commencement of construction of the Generating Facility and extends at least through the last day of the Term.
141. “Lender” means any and all financial institutions and tax equity providers, or successors in interest or assignees thereof (including, if applicable, Governmental Authorities):
- (a) Lending money or extending credit (including any financing lease, monetization of tax benefits, or backleverage financing) to Seller, or in connection with a Portfolio Financing, as follows:
    - i) For the construction, permanent, or interim financing or refinancing of the Project;
    - ii) For working capital or other ordinary business requirements of Seller (including the maintenance, repair, replacement or improvement of the Project);

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- iii) For any development financing, bridge financing, credit support, or credit enhancement; or
  - iv) For any capital improvement or replacement related to the Project;
- (b) Participating (directly or indirectly) as a tax equity investor in Seller utilizing Federal Tax Credits or tax depreciation benefits associated with holding an ownership interest in Seller; or
- (c) Participating as a lessor under a lease finance arrangement relating to the Project (which Person or Persons shall not include Seller or any of its Affiliates).
142. "Letter of Credit" means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit N and acceptable to SCE, provided by Seller from an issuer acceptable to SCE that is either a U.S. commercial bank or a U.S. branch of a foreign bank with the bank having a Credit Rating of at least (a) "A-" from S&P and Fitch, and "A3" from Moody's, if such entity is rated by all three ratings agencies; or (b) "A-" from S&P or Fitch, or "A3" from Moody's, if such entity is rated by only one or two of the ratings agencies. Seller must bear the costs of all Letters of Credit.
143. "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:
- (a) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
  - (b) The issuer of the Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Letter of Credit;
  - (c) The Letter of Credit fails or ceases to be in full force and effect at any time;
  - (d) Seller fails to provide an extended or replacement Letter of Credit prior to twenty (20) Business Days before the Letter of Credit expires or terminates;
  - (e) The issuer of the Letter of Credit becomes Bankrupt; or
  - (f) The issuer of a Letter of Credit fails to maintain a Credit Rating of at least (i) "A-" from S&P and Fitch, and "A3" from Moody's, if such entity is rated by all three ratings agencies; or (ii) "A-" from S&P or Fitch, or "A3" from Moody's, if such entity is rated by only one or two of the ratings agencies;
- provided*, no Letter of Credit Default will 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.
144. "Local Business Day" means a Business Day on which commercial banks are open for business in relation to any:
- (a) Payment, in the place where the relevant account is located; and



- (b) 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.
145. "Locational Marginal Price" has the meaning set forth in the CAISO Tariff.
146. "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.
- Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement and must include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.
- Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.
147. "Lost Output" means the reduction in Qualified Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit M, but was not delivered due to a Lost Output Event.
148. "Lost Output Event" means any of the following occurrences which cause Seller to be unable to deliver energy:
- (a) Force Majeure;
  - (b) SCE's failure to perform a material covenant or obligations under this Agreement, which failure is continuing, until such time as the failure has been cured, provided that Seller has provided SCE Notice of such failure;
  - (c) A curtailment or reduction of deliveries in accordance with Sections 3.12(f) or (g), or as otherwise ordered or caused by the CAISO, or SCE acting as a Transmission Provider (including without limitation a curtailment or reduction that does not constitute a Force Majeure as provided in subparagraph (f) of the definition of Force Majeure); or
  - (d) An Emergency, to the extent not already covered in item (c) above.

149. "Lost Output Report" means the monthly report of Lost Output in the form of the worksheet from the Lost Output Workbook prepared in accordance with the procedures set forth in Section 3.22 and Exhibit M.
150. "Lost Output Workbook" has the meaning set forth in Exhibit M.
151. "Material Construction Permits" means those Permits that grant Seller the authority to develop and construct the Generating Facility on the Site pursuant to applicable environmental rules and regulations, which Permits are set forth in Exhibit G-1. Material Construction Permits include conditional use permit and authority to construct.
152. "Material Permits" means all permits required for Commercial Operation of the Generating Facility, as set forth on Exhibit G-2.
153. "Mediator" has the meaning set forth in Article Twelve.
154. "Meteorological Equipment" means the instruments and equipment that meet those specifications set forth in Exhibit T, as may be modified by SCE from time to time to reflect the CAISO's PIRP/EIRP protocol.
155. "Metered Amounts" means the electric energy expressed in kWh, as recorded by the CAISO Approved Meter(s), or Check Meter(s), as applicable.
156. "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.
157. "Moody's" means Moody's Investor Services, Inc.
158. "MRTU" means the Market Redesign and Technology Upgrade first implemented by CAISO in April 2009.
159. "MW" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
160. "MWh" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
161. "NERC" means the North American Electric Reliability Corporation, or any successor thereto.
162. "NERC Reliability Standards" means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by NERC and approved by the applicable regulatory authorities.
163. "NERC Standards Non-Compliance Penalties" means any and all monetary fines, penalties, damages, interest or assessments by the NERC, CAISO, WECC, a Governmental Authority or any entity acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

164. "NextEra" means NextEra Energy Resources, LLC, a Delaware limited liability company.
165. "Non-Availability Charges" has the meaning set forth in the CAISO Tariff.
166. "Non-Defaulting Party" has the meaning set forth in Section 6.02.
167. "Non-Disclosure Agreement" has the meaning set forth in Section 10.10(b)(i).
168. "Notice" means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
169. "Notice of Non-Renewal" has the meaning set forth in Section 8.02(b)(iv)(2).
170. "OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data or its successor.
171. "Operate", "Operated", "Operating" or "Operation" means to provide, or cause 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.
172. "Operating Procedures" has the meaning as set forth in the CAISO Tariff.
173. "Original Term" has the meaning set forth in Section 1.06(a).
174. "Outage Schedule" has the meaning set forth in Section 3.15(a).
175. "Over-Schedule Generation Curtailment Order" or "OSGC Order" has the meaning set forth in Section 4.03(b)(ii).
176. "Over-Schedule Generation Curtailment Quantity" or "OSGC Quantity" has the meaning set forth in Section 4.03(b)(ii).
177. "Participating TO's Interconnection Facilities" has the meaning set forth in the CAISO Tariff.
178. "Participating Intermittent Resource" means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the CAISO Tariff.
179. "Participating Intermittent Resource Program" or "PIRP" means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000 or any successor program that SCE determines accomplishes a similar purpose.
180. "Party" or "Parties" have the meaning set forth in the Preamble.
181. "Payment Invoices" are invoices issued by Seller during the Startup Period and Delivery Term detailing amounts owed by SCE to Seller or by Seller to SCE for energy deliveries, CAISO Revenues, CAISO Costs, CAISO Sanctions, SCE Penalties

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- and other charges and adjustments as may be owed by the Parties, in accordance with Exhibit E.
182. "Performance Assurance" means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.08) for Seller's performance under this Agreement in the form of cash or one or more Letters of Credit.
183. "Performance Assurance Amount" means the collateral amount for Performance Assurance set forth in Section 1.08.
184. "Performance Tolerance Band" has the meaning set forth in Exhibit Q.
185. "Permit Approval" means approval by the relevant regulatory agencies of any Permit and shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by the pendency of an appeal or other post-issuance challenge to the issuance of the Permit.
186. "Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish and retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to SCE.
187. "Permitted Liens" means (a) liens imposed by any Governmental Authority for any taxes, assessments or other charges that are not delinquent or the payment of which is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted, (b) liens arising out of court judgments or arbitral awards, so long as an appeal or proceeding for review is being prosecuted in good faith and adequate reserves, as required by GAAP, bonds or other security have been provided, or such judgments or awards are fully covered by insurance, (c) non-monetary liens incident to the ordinary course of business that do not in the aggregate materially impair the use or value of the property or assets in question, (d) liens in favor of SCE arising under or in connection with this Agreement, (e) mechanics' and materialmen's liens arising in the ordinary course of business for amounts not yet due or for which a bond, letter of credit or other security has been posted, and (f) carriers', warehousemen's, suppliers' or other similar liens arising in the ordinary course of business for amounts not yet due or for which a bond, letter of credit or other security has been posted.
188. "Person" means any legal or natural person, including any partnership, corporation, limited liability company, business trust, joint stock company, association, joint venture, or any other entity of whatever nature.
189. "Photovoltaic Module" means the individual module or component that produces DC electric energy from sun light.
190. "Photovoltaic Module DC Rating" means, for each Photovoltaic Module installed or to be installed at the Site, the number (expressed in kW<sub>PDC</sub>) stated on the nameplate

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- affixed thereto representing the manufacturer's maximum (at "peak" sunlight) DC power rating at the standard test condition ("P<sub>mp</sub>" or Power maximum at peak).
191. "PNode" has the meaning set forth in the CAISO Tariff.
192. "Portfolio" means the single portfolio of electrical energy generating assets and entities, including the Generating Facility, owned by Seller's Affiliates (or the interests of Seller or the interests of its direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing; *provided*, that:
- (a) All such generating assets are located in the United States;
  - (b) The Contract Capacity represents not less than twenty-five percent (25%) of the total installed MW capacity of the generating assets comprising the Portfolio; and
  - (c) The buyers of the electrical energy of the generating facilities in the Portfolio each have a credit rating of at least BBB- by S&P or Baa3 by Moody's; *provided*, that if such buyers of the electrical energy do not satisfy the requirement set forth in this subparagraph (c), SCE may waive or modify such requirement in its sole discretion.
193. "Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by the Generating Facility (or the interests of Seller or the interests of its direct or indirect parent companies) and other generating assets owned by Seller's Affiliates (or interests of such Affiliates).
194. "Portfolio Financing Entity" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.
195. "Potential Site" has the meaning set forth in Section 3.09(a).
196. "Price Taker" has the meaning set forth in the CAISO Tariff.
197. "Product" has the meaning set forth in Section 1.01(d).
198. "Product Payment" has the meaning set forth in Exhibit E.
199. "Product Payment Allocation Factor" has the meaning set forth in Exhibit K.
200. "Product Price" means the price set forth in Sections 1.07.
201. "Product Replacement Damage Amount" has the meaning set forth in Section 3.07(b).
202. "Project" means the Generating Facility.
203. "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

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and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers' warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Applicable Laws.

Prudent Electrical Practices also includes taking reasonable steps to ensure that:

- (a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
  - (b) Sufficient Operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
  - (c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe Operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
  - (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
  - (e) Equipment is not Operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
  - (f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
204. "Qualified Amounts" means the Metered Amounts, expressed in kWh, that qualify as renewable power under the requirements of the California Renewables Portfolio Standard, or which do not so qualify solely due to a change in RPS Legislation occurring after the Effective Date, which, notwithstanding Seller's compliance with Section 1.13, cannot be complied with by Seller on a commercially reasonable basis.

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205. "RAP ID" means the contract identification number set forth on the title page to this Agreement.
206. "Real-Time Availability" means Seller's cumulative available capacity of the Generating Facility on a real-time basis.
207. "Real-Time Market" has the meaning set forth in the CAISO Tariff.
208. "Real-Time Over-Schedule Generation Curtailment Order" or "RTOSGC Order" has the meaning set forth in Section 4.03(e)(ii).
209. "Real-Time Over-Schedule Generation Curtailment Quantity" or "RTOSGC Quantity" has the meaning set forth in Section 4.03(e)(ii).
210. "Real-Time Price" means the CAISO Real-Time Market Locational Marginal Price for electric energy in each applicable Settlement Interval (including the energy, congestion and losses components) at the Generating Facility's PNode (as published by the CAISO) which is the pricing point used by the CAISO for settlements of this Generating Facility.
211. "Reliability Network Upgrades" has the meaning set forth in the CAISO Tariff.
212. "Renewable Energy Credit" or "REC" has the meaning set forth in CPUC Decision D.08-08-028, as such definition may be modified by the CPUC or Applicable Law from time to time.
213. "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.
214. "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.
215. "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 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 throughout the Delivery Term.
216. "Responsible Officer" means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.
217. "Restricted Period" has the meaning set forth in Section 2.06(b).
218. "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, *et seq.*

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219. "S&P" means the Standard & Poor's Rating Group.
220. "SCE" has the meaning set forth in the Preamble.
221. "SCE Penalty" means the amount charged to Seller by SCE, in accordance with Exhibit Q, for hours in a calendar month when Seller does not accurately provide availability information as set forth in Exhibit D.
222. "Schedule," "Scheduled" or "Scheduling" means the action of SCE in submitting Bids to the CAISO and receiving all CAISO Markets results from the CAISO; *provided*, that with respect to any Settlement Interval, a CAISO Market result where the Generating Facility is instructed to deliver zero (0) MWhs is not considered a "Schedule" for purposes of this Agreement.
223. "Scheduling Coordinator" or "SC" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
224. "SEC" means the Securities and Exchange Commission.
225. "Security Interest" has the meaning set forth in Section 8.03.
226. "Seller" has the meaning set forth in the Preamble.
227. "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

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characterized as indebtedness of Seller (without regard to accounting treatment);

- (f) All obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities;
- (g) All obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
- (h) All obligations of Seller with respect to any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value;
- (i) All indebtedness of others referred to in clauses (a) through (h) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement:
  - i) To pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness;
  - ii) To purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of the 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 will be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation.

Notwithstanding the foregoing, the term "Seller's Debt" as used herein does 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).

228. "Seller's Energy Delivery Obligation" has the meaning set forth in Section 3.07(a)(i).

229. "Settlement Interval" means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
230. "Shared Facilities Agreement" means that certain Shared Facilities Agreement, dated as of August 12, 2011, by and among the Interconnecting Affiliate, the Interconnection Sharing Affiliate, and Seller, a copy of which is attached to this Agreement as Exhibit P.
231. "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.
232. "Site" means the Potential Site on which the Generating Facility is, or will be located, as further described in Exhibit B, and subject to Section 3.09(a).
233. "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 or similar instrument with respect to the Site; or
  - (d) Be the managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and the Generating Facility.
234. "Solar Resource Evaluation Report" means a final report concerning the electric energy producing potential of the Site prepared by an independent engineer which assesses the solar resource potential at the Site.
235. "Startup Period" means the period that begins at Initial Synchronization and ends at Commercial Operation Date.
236. "Station Use" means:
- (a) The electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; and
  - (b) The electric energy produced by the Generating Facility that is consumed within the Generating Facility's electric energy distribution system as losses.
237. "Supervisory Control and Data Acquisition" or "SCADA" has the meaning set forth in the CAISO Tariff.
238. "Supplemental Lost Output" has the meaning set forth in Section 3.22(b).
239. "Supplemental Lost Output Report" has the meaning set forth in Section 3.22(b).

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240. "Telemetry System" means a system of electronic components that interconnects the Generating Facility, GMS and the CAISO as set forth in Section 3.08(e).
241. "Term" means the term of this Agreement, as set forth in Section 1.06.
242. "Term Year" means a twelve (12) month period beginning on the first day of the calendar month following the Commercial Operation Date and each successive twelve (12) month period thereafter.
243. "Term Year Energy Yield Factor" means the AC energy in kWh per Term Year that is expected to be delivered to SCE per installed peak DC power in kW<sub>PDC</sub> of the Photovoltaic Modules, as set forth in Section 1.01(i).
244. "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.
245. "TOD Period(s)" means the time of delivery period(s) set forth in Exhibit K.
246. "TOD Period Product Payment" means a portion of a Product Payment based upon the time of delivery of Product and calculated in accordance with the formula set forth in Section 3.02 of Exhibit E.
247. "Total Term Project Revenues" means the sum of the estimated revenue for the entire Term, as calculated in the Seller's Revenue Calculator prepared by Seller and submitted to SCE.
248. "Trading Day" has the meaning set forth in the CAISO Tariff.
249. "Transmission Completion Date" means the date by which each of the following has occurred: (a) Seller has obtained FERC's acceptance of the Interconnection Agreement so that the Generating Facility may interconnect with the CAISO Controlled Grid for the purpose of delivering electric energy to SCE pursuant to this Agreement, (b) the Transmission Provider or other responsible entity has completed the Reliability Network Upgrades set forth in the Interconnection Agreement, and (c) the Participating TO's Interconnection Facilities have been energized.
250. "Transmission Provider" means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
251. "Unawarded Energy" is the Forecast-Derived Energy in any hour of the applicable Trading Day for which hour no Schedule has been awarded in the Day-Ahead Market.
252. "Ultimate Parent" means NextEra Energy, Inc., a Florida corporation.
253. "Unincluded Capacity" has the meaning set forth in Section 3.06(g)(ii).
254. "Web Client" means a web-based system approved by SCE.

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255. "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
256. "WMDVBE" has the meaning set forth in CPUC General Order 156.
257. "WREGIS" has the meaning set forth in Section 3.01(e)(iv).

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

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

## EXHIBIT B

### *Generating Facility and Site Description*

1. **Generating Facility Description.** The Generating Facility will include the following major components or systems:
  - a. Photovoltaic Modules;
  - b. Solar support structures;
  - c. Electrical Distribution System;
  - d. Collection and Step-up Transformation/Utility Interconnection; and
  - e. Control System.

Each of these components is described in more detail in the following sections.

#### Photovoltaic Modules.

The Generating Facility will utilize photovoltaic technology, where the sun's light energy is converted directly into DC electrical energy within the Photovoltaic Modules. The Photovoltaic Modules can be mounted together in different configurations, depending on the equipment selected, on a common support framework.

The Photovoltaic Modules are grouped together in solar fields, or arrays. The size of the array is based on the capacity of the equipment selected and is intended to generate the desired overall voltage and current output. The exact arrangement and nature of the photovoltaic systems will be determined during the final design.

#### Solar Support Structures.

There are different types of mounting structures for the Photovoltaic Modules, depending on whether the Photovoltaic Modules will be fixed in one position or intended to track the sun's motion during the day. A fixed structure holds the panels in a constant position tilted toward the southern horizon. A solar tracking mechanism is used to maximize the solar energy conversion efficiency by keeping the modules aligned with the sun's energy rays throughout most of the day. This completed assembly of Photovoltaic Modules mounted on a framework structure is called a "tracker" as it tracks the sun from east to west. The Generating Facility may use trackers to increase the energy production from Photovoltaic Modules. By selecting a fixed structure more MWs can be placed in a smaller footprint as the lack of panel shadowing due to tracking is not a concern.

As of the Effective Date, there are two types of tracker systems that may be selected: a ganged system or a stand-alone tracker system. A ganged tracker system utilizes one motor to control multiple rows of Photovoltaic Modules through a series of mechanical linkages and gearboxes, while a stand-alone system utilizes a single motor and gearbox per row of Photovoltaic Modules. The exact tracker manufacturer and model will be determined in the

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final design. However, all trackers are intended to function identically in terms of following the motion of the sun.

Module layout and spacing is typically optimized to balance energy production versus peak capacity, and depends on the sun angles and shading due to the surrounding horizon of the site. The spacing between the rows of trackers is dependent on site-specific features and will be identified in the final design.

## Electrical Distribution System.

The electrical distribution system will be designed to transform the output power from the Photovoltaic Modules from DC to AC and then from low voltage to transmission level voltage for connection to the grid, and to supply power to each tracker's auxiliary electrical equipment and systems.

The DC current from the Photovoltaic Modules will be transmitted to the associated voltage inverter through underground DC electrical cables. The resulting AC current from each individual Current Inverter will then be routed through AC cables to the corresponding, oil-filled, medium voltage, step-up transformer. Based on the preliminary design, the output voltage from the Current Inverter will be increased to the desired substation feed voltage (34.5 kV) by these step-up transformers.

## Collection and Step-up Transformation/Utility Interconnection.

The Generating Facility's substation will consist of an area of approximately seven acres of the Site. The Generating Facility's substation is anticipated to consist of parallel sets of internal power distribution systems (i.e., 34.5kV buses and circuit breakers, disconnect switches, and main step-up transformers) to increase the voltage to the 220kV transmission line voltage.

The power from the combined Photovoltaic Modules for the Generating Facility will be transformed through one of the dedicated main step-up transformers, from the medium distribution voltage (34.5kV) to the 220kV transmission line voltage. The substation and interconnections will be built for 220 kV and will operate at that nominal voltage.

Shield wires and lightning arrestors will be included to protect the substation equipment and personnel against lightning strikes.

The electrical power generated by the Generating Facility will be transmitted through the single-circuit gen-tie that will be routed to the proposed SCE 220 kV Colorado River Substation.

## Interconnection to Electrical Grid.

The Generating Facility will interconnect to SCE's proposed Colorado River Substation through the proposed gen-tie corridor. The gen-tie structures will connect to the electrical grid through a 220 kV ring bus that is subsequently connected to SCE's proposed Colorado River Substation. The ring bus is expected to be less than 2 acres in size and will be located approximately 25 feet off of SCE's Colorado River Substation's northern fence line and in alignment with breaker position 7.

## Ancillary Facilities (Administrative and Maintenance Facilities and Storage Sites).

### O&M Building.

The Generating Facility will include an O&M facility. The O&M facility will be a pre-engineered metal building with metal siding and roof. The building will provide a small administrative area, a work area for performing minor repairs and a storage area for spare parts. The building will be supported on reinforced concrete mat foundations or individual spread footings as determined during detailed design. The floor will consist of a reinforced concrete slab.

### Water supply and treatment system.

As of the Effective Date, it is anticipated that the plant water needs will be supplied from groundwater. The groundwater will be treated to the necessary water quality for cleaning the Photovoltaic Modules using a conventional water treatment system.

### Water storage tanks.

There may be several tanks on-site for the storage of the raw water, treated water, and potable water. The raw water storage capacity will also provide the fire supply. The water treatment area, intended to contain the water treatment system, water storage area and, if required, a small evaporation pond, is estimated to be approximately 3 acres. Final water storage tank volumes will be determined during the detailed design phase.

### Control Systems.

The Generating Facility will utilize SCADA for remote control and monitoring of the Current Inverters and other equipment.

## **2. Site Description.**

As further described in Section 3.09(a), the Site has not been finalized but is being proposed on one of the two Potential Sites. The first Potential Site ("Potential Site 1") is primarily located on federal land managed by the Palm Spring Office of the Bureau of Land

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Management with a small portion of private property. The second Potential Site ("Potential Site 2") is exclusively private land with the exception of the generation-tie line.

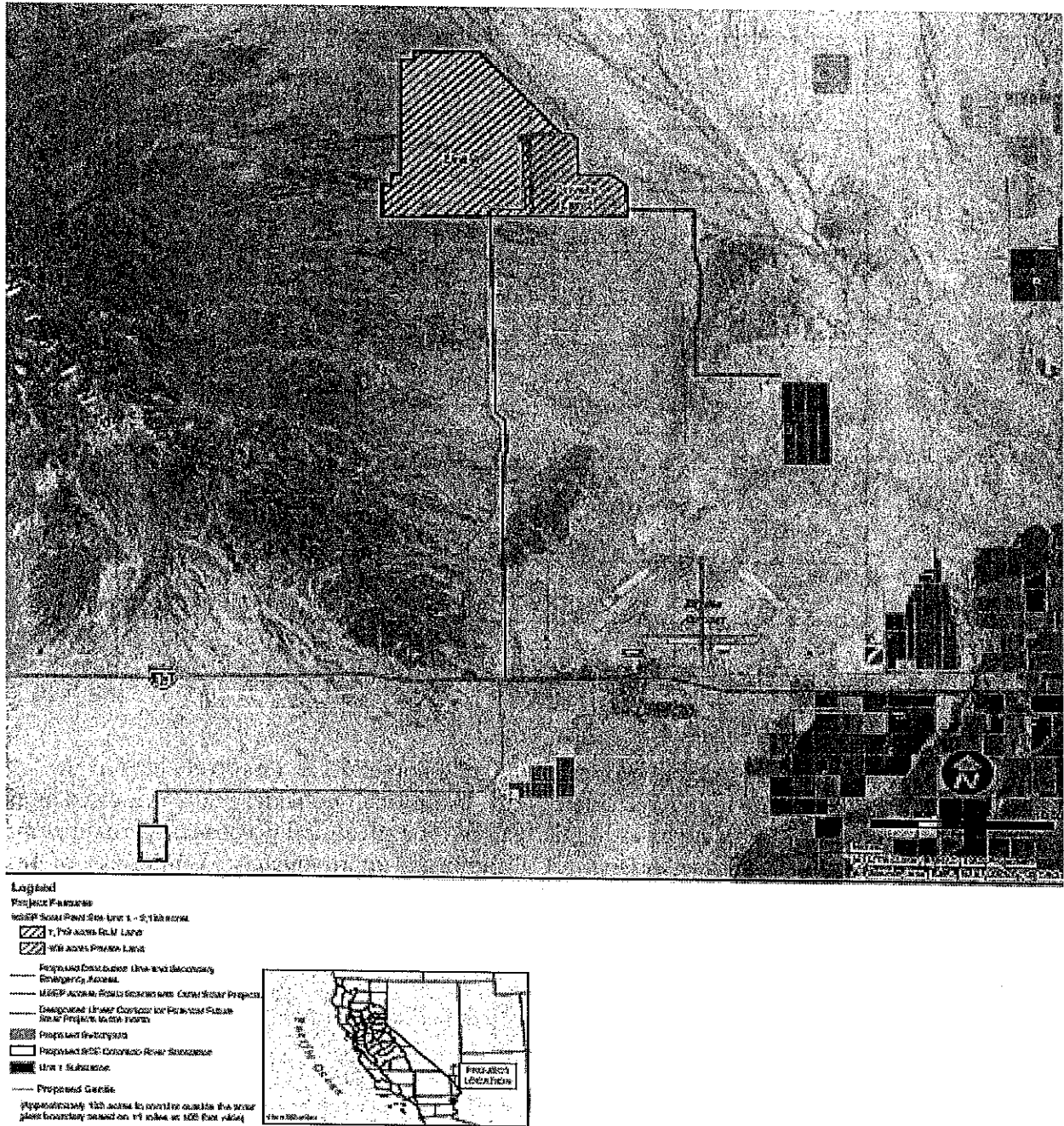
Potential Site 1 – Bureau of Land Management with Private land.

Potential Site 1 is proposed to be located in the Sonoran Desert on BLM land in an unincorporated area within Riverside County, California. Potential Site 1 is located in an undeveloped, rural area, approximately 13 miles northwest of the town of Blythe, California and approximately 32 miles east of the town of Desert Center, California, along Interstate 10 (I-10) (Figure 1-1). Potential Site 1 does not have an physical address; however the GPS coordinates for the center of the Potential Site 1 are as follows: (-114.764916, 33.703124)

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



Figure 1-1, Project Vicinity Map – Potential Site 1



The project footprint, it is expected to be approximately 2300 acres which includes the solar field and associated facilities.

The parcel description for Potential Site 1 is as follows:

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**Table 1-1, Project Parcel Description – Potential Site 1**

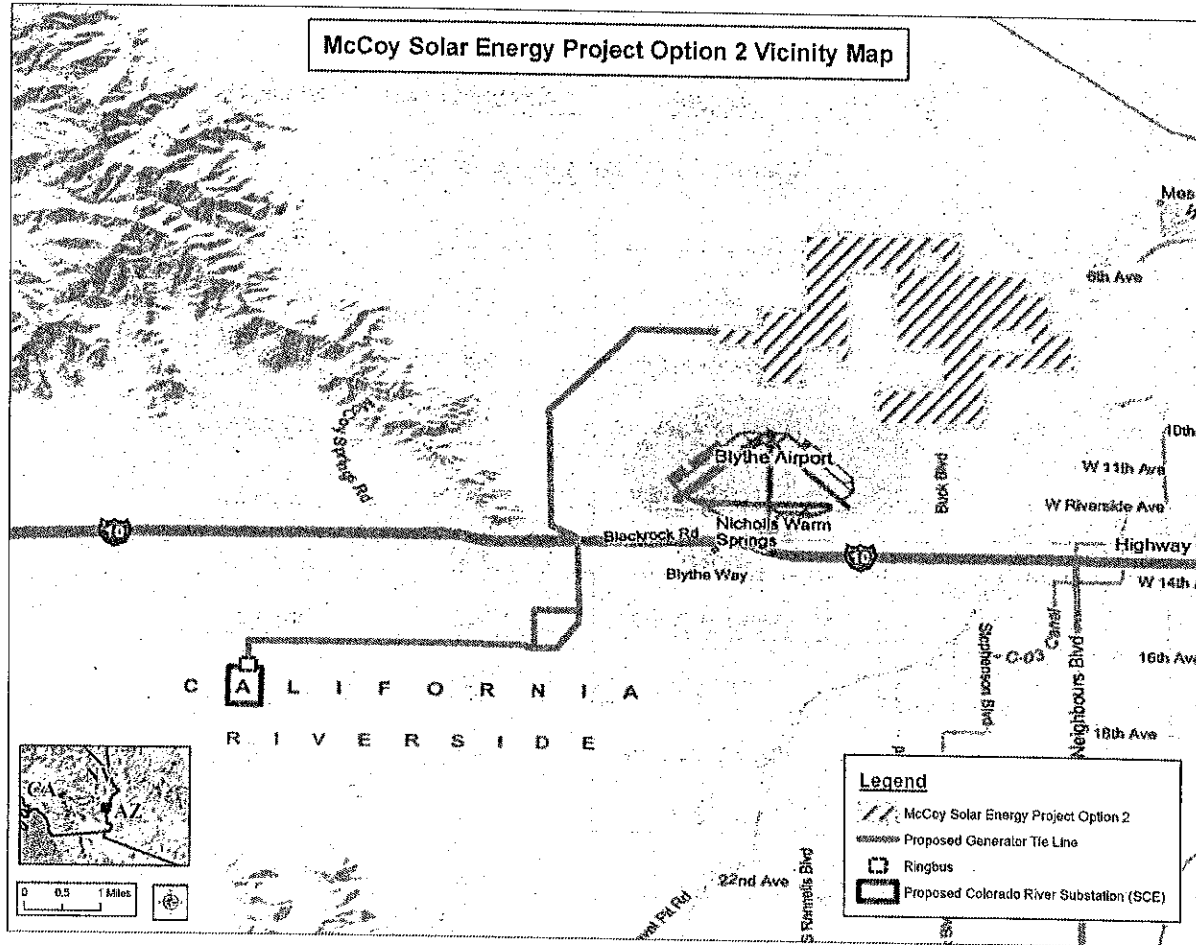
<u>Section</u>	<u>Aliquot</u>	<u>Estimated Acres</u>	<u>Ownership</u>
Meridian 27, Township 5S, Range 21E			
25	Portion, E1/2 SW1/4	26	BLM
26	E1/2, SE1/4, Portion NE1/4	510	BLM
27	E1/2	244	BLM
34	E1/2, E1/2 SW1/4	344	BLM
35	W1/2, W1/2 E1/2, Portion E1/4	595	BLM
35	Portion E1/4	47	Private
36	E1/2, SE1/4	422	Private

Potential Site 2 – Private land

Potential Site 2 is proposed to be located in the Sonoran Desert on private land in an unincorporated area within Riverside County, California. Potential Site 2 is located on land in an undeveloped, rural area, traditionally used for agricultural purposes, approximately 11 miles northwest of the town of Blythe, California and approximately 34 miles east of the town of Desert Center, California, along I-10 (Figure 2-1). Potential Site 2 does not have a physical address; however the GPS coordinates for the center of the site are as follows: (-114.689884, 33.651076).

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Figure 2-1, Project Vicinity Map – Potential Site 2



As of the Effective Date, Potential Site 2's footprint is approximately 3000 acres.

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The parcel description for Potential Site 2 is as follows:

**Table 2-1, Project Parcel Description**

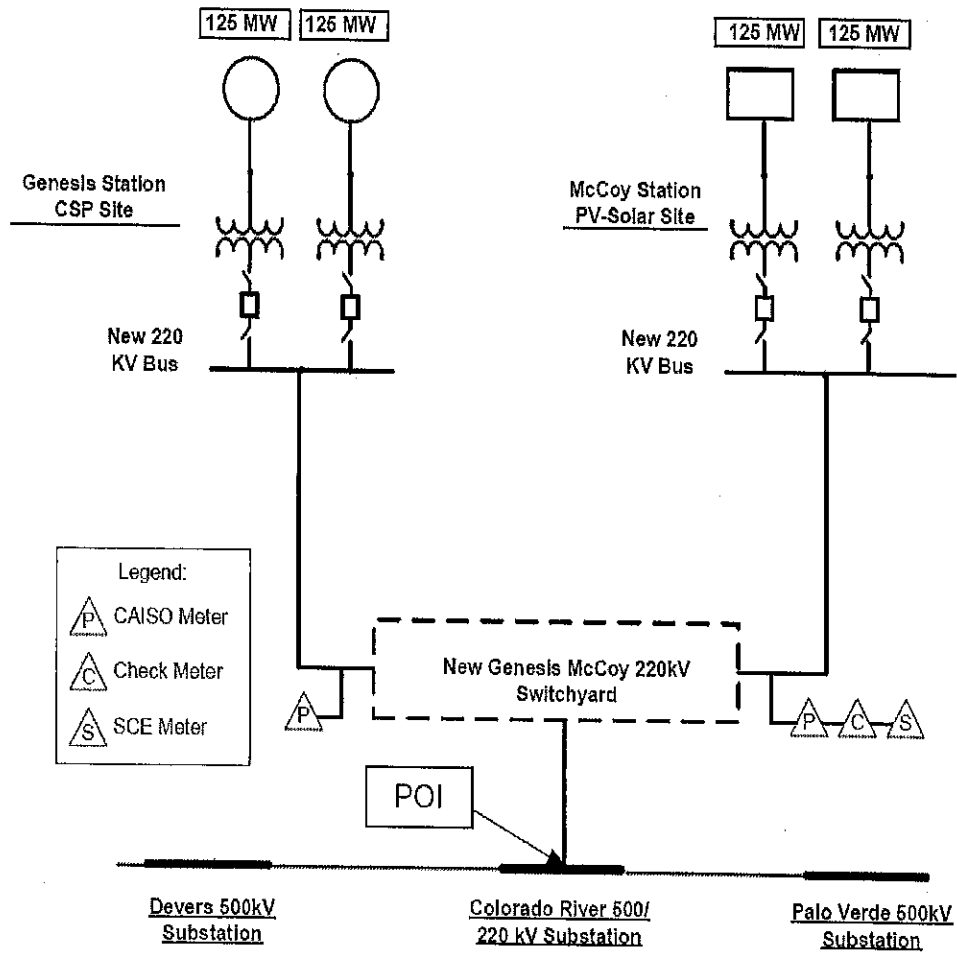
Section	Aliquot	Estimated Acres	Ownership
Meridian 27, Township 6S, Range 22E			
8	S 1/2	320	private
9	Parts of S 1/2	200	private
15	Parts of section	400	private
16	Entire Section	640	private
17	W 1/2	320	private
18	Parts of S 1/2	240	private
19	NE 1/4	160	private
20	Parts of section	100	private
21	E 1/2, NW 1/4	480	private
22	N 1/4	160	private

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**EXHIBIT B-1**

*Single-Line Diagram of the CAISO Controlled Grid Interconnection*

**Preliminary McCoy One-line**



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

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

**EXHIBIT C**

*Notice List*

<p><b>MCCOY SOLAR, LLC</b> ("Seller")</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b></p>
<p>All Notices are deemed provided in accordance with Section 10.08 if made to the address and facsimile numbers provided below:</p>	<p>Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address or facsimile number provided below:</p>
<p><b>Contract Sponsor:</b> Attn: Vice President, West Region Business Management  Street: 700 Universe Boulevard City: Juno Beach, Florida 33408 Phone: (561) 304-5235 Facsimile: (561) 691-7309</p>	<p><b>Contract Sponsor:</b> Attn: Vice President of Renewable and Alternative Power  Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-1212 Facsimile: (626) 302-1103</p>
<p><b>Reference Numbers:</b> Duns: 96-354-5293 Federal Tax ID Number: 27-3153509</p>	<p><b>Reference Numbers:</b> Duns: 006908818 Federal Tax ID Number: 95-1240335</p>
<p><b>Contract Administration:</b> Attn: Vice President, West Region Business Management Phone: (561) 304-5235 Facsimile: (561) 691-7309</p>	<p><b>Contract Administration:</b> Attn: David Cox Phone: (626) 302-9513 Facsimile: (626) 302-9622</p>
<p><b>Forecasting:</b> Attn: Phone: Facsimile:</p>	<p><b>Generation Operations Center:</b> Phone: (626) 307-4453 or Phone: (626) 307-4410 E-mail: realtime@sce.com</p>

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

<p><b>MCCOY SOLAR, LLC</b> ("Seller")</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")</b></p>
<p><b>Day-Ahead Forecasting:</b> Attn: Phone:</p>	<p><b>Day-Ahead Scheduling:</b> <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302-1323 Facsimile: (626) 302-3409  <u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 302-3409 E-mail: PreSched@SCE.com</p>
<p><b>Real-Time Forecasting:</b> Attn: Phone:</p>	<p><b>Real-Time Scheduling:</b> <u>Manager.</u> Attn: Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 302-3409  <u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 302-3409 E-mail: RealTime@SCE.com</p>
	<p><b>Short Term Planning:</b> Attn: DA Scheduling Phone: (626) 302-4425 Facsimile: (626) 302-4413  E-mail: Preschedule@SCE.com</p>
<p><b>Payment Statements:</b> Attn: Vice President, West Region Business Management Phone: (561) 304 5235 Facsimile: (561) 691-7309 E-mail: Matthew.Schafer@nexteraenergy.com</p>	<p><b>Payment Statements:</b> Attn: Power Procurement - Finance Phone: (626) 302-3277 Facsimile: (626) 302-3276 E-mail: PPFDPowerSettle@SCE.com</p>

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

<p><b>MCCOY SOLAR, LLC</b> ("Seller")</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY</b> ("SCE")</p>
<p><b>CAISO Costs and CAISO Sanctions and SCE Penalties:</b> Attn: Vice President, West Region Business Management Phone: (561) 304 5235 Facsimile: (561) 691-7309 E-mail: Matthew.Schafer@nexteraenergy.com</p>	<p><b>CAISO Costs, CAISO Sanctions and SCE Penalties:</b> Attn: Power Procurement - Finance Phone: (626) 302-3277 Facsimile: (626) 302-3276 E-mail:PPFDPowerSettle@SCE.com</p>
<p><b>Payments:</b> Attn: Vice President, West Region Business Management Phone: (561) 304 5235 Facsimile: (561) 691-7309 E-mail: Matthew.Schafer@nexteraenergy.com</p>	<p><b>Payments:</b> Attn: Power Procurement - Finance Phone: (626) 302-3277 Facsimile: (626) 302-3276 E-mail:PPFDPowerSettle@SCE.com</p>
<p><b>Wire Transfer:</b> BNK: Bank of America BOFAUS3N ABA for Wire: 0260-0959-3 ABA for ACH: 111-000-012 ACCT: NextEra Energy Resources, LLC #3751006981</p>	<p><b>Wire Transfer:</b> BNK: JP Morgan Chase Bank ABA: 021000021 ACCT: 323-394434</p>
<p><b>Credit and Collections:</b> Attn: Director, Credit Risk Management Phone: 561-304-6178 Facsimile: E-mail: tradecredit@nexteraenergy.com</p>	<p><b>Manager of Credit Risk and Collateral:</b> Attn: Manager of Credit Risk and Collateral Management Phone: (626) 302-1129 Facsimile: (626) 302-2517</p>
<p><b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: Vice President and General Counsel Phone: (561) 691-7151 Facsimile: (561) 691-7305 E-mail:John.Ketchum@nexteraenergy.com</p>	<p><b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904</p>
<p><b>Lender:</b> Attn: Phone: Facsimile: E-mail:</p>	

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



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

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

## EXHIBIT D

### *Forecasting and Scheduling Requirements and Procedures*

1. Introduction.

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

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

2. Seller's Forecasting Requirements.

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

- (a) No later than thirty (30) days before the Initial Synchronization Date, Seller shall provide SCE, via the Web Client, with a 30-day, hourly Forecast, in MWh, for the thirty (30) day period commencing on Initial Synchronization.
- (b) If, after submitting the Forecast pursuant to Item 2.(a), Seller learns that Initial Synchronization will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated 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 before the revised 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 before the actual Initial Synchronization Date.
- (c) If the Web Client becomes unavailable, Seller shall provide SCE with the Forecast by e-mailing SCE.
- (d) The Forecast, and any updated Forecasts provided pursuant to this Item 2, must:
  - (i) Not include any anticipated or expected electric energy losses after the CAISO Approved Meter or Check Meter; and
  - (ii) Limit hour-to-hour Forecast changes to no less than two hundred fifty (250) kWh or 0.25 MW, as applicable, during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.
- (e) Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Item 2.(a) above and on or

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before 5:00 p.m. PPT every Wednesday thereafter until the end of the Delivery Term, Seller shall update the Forecast for the thirty (30) day period commencing on the Sunday following the weekly Wednesday 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 Forecast update by e-mailing SCE.

(f) Forecasting Electric Energy.

During the Startup Period (including with respect to Forecasts provided in accordance with Section 2(a) of this Exhibit D), Seller shall Forecast electric energy, in MWh, in accordance with SCE's instructions. If Seller learns of any change in the total electrical energy output of the Generating Facility for a period covered by the most recent Forecast update resulting from any cause, including an unplanned outage, before the time that the next weekly update of the Forecast is due which results in variance in expected energy in any hour of plus (+) or minus (-) three percent (3%) from the energy reported in the most recent Forecast update, Seller shall provide an updated Forecast to SCE. This updated Forecast must be submitted to SCE by no later than:

- (i) 5:00 a.m. PPT on the day before any day impacted by the change, if the change is known to Seller at that time. If the Web Client is not available, Seller shall e-mail these changes to [presched@sce.com](mailto:presched@sce.com) and immediately follow up with a phone call to SCE's Day-Ahead Scheduling Desk in accordance with Exhibit C;
- (ii) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
- (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, within twenty (20) minutes after Seller became aware or, using best efforts, should have become aware of the commencement of the event which caused the available capacity change, e-mail changes to [realtime@sce.com](mailto:realtime@sce.com) and immediately telephone SCE's Real-time Operations Desk in accordance with Exhibit C.

(g) Forecasting Available Capacity.

During the Term, Seller shall Forecast available capacity, in MW, in accordance with SCE's instructions. If:

- (i) Seller is Forecasting available capacity, in accordance with SCE's instructions;
- (ii) Seller does not provide real-time communication of availability as provided in Section 3.08(g);
- (iii) The telecommunications path to obtain real-time data is inoperable; or
- (iv) Instrumentation is providing faulty or incorrect data; and

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

- (1) 5:00 a.m. PPT on the day before any day impacted by the change, if the change is known to Seller at that time. If the Web Client is not available, Seller shall e-mail these changes to [presched@sce.com](mailto:presched@sce.com) and immediately follow up with a phone call to SCE's Day-Ahead Scheduling Desk in accordance with Exhibit C;
- (2) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
- (3) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, within twenty (20) minutes after Seller becomes aware or, using best efforts, should have become aware of the event which caused the availability change, e-mail changes to [realtime@sce.com](mailto:realtime@sce.com) and immediately telephone SCE's Real-time Operations Desk in accordance with Exhibit C.

- (h) Seller's updated Forecast must reflect the following information:
- (i) The beginning date and time of the change;
  - (ii) The expected ending date and time of the event;
  - (iii) The expected availability, in MW (if so instructed by SCE);
  - (iv) The expected energy, in MWh (if so instructed by SCE); and
  - (v) Any other information required by the CAISO as communicated to Seller by SCE.

3. SCE's Scheduling Responsibilities.

SCE shall be responsible for Scheduling the Product in accordance with this Agreement.

4. Seller's Outage Scheduling Requirements.

Seller shall meet all requirements and timelines for generation outage scheduling contained in the CAISO's Scheduled and Forced Outage Procedure T-113, or its successor, as posted on the CAISO's website.

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

**EXHIBIT E***Payments and Invoicing***A. COST RESPONSIBILITY, INVOICING AND PAYMENTS FOR STARTUP PERIOD****1.01 Cost Responsibility for Startup Period.**

- (a) During the Startup Period, Seller shall be responsible for all CAISO Costs, CAISO Revenues and CAISO Sanctions, if any, and SCE will pay Seller \$22.00/MWh, attributable to or assessed for energy delivered to any CAISO administered market.
- (b) Seller shall comply with the Forecasting provisions set forth in Exhibit D.
- (c) Seller shall make payments for SCE Penalties and CAISO Sanctions, and receive CAISO Revenues in accordance with those provisions set forth in Section 1.02 hereof and Exhibit Q.

**1.02 Payments and Payment Invoice for Startup Period.****(a) Payment Calculations for Startup Period.**

For the purpose of enabling Seller to calculate monthly Payment Invoices, SCE, as Scheduling Coordinator, shall compile a statement of all CAISO Costs, CAISO Sanctions, CAISO Revenues and any SCE Penalties, and forward it to Seller by the later of one hundred and twenty (120) days following the last day of a calendar month (for electric energy deliveries during that month) or thirty (30) days after the CAISO final settlement data is available to SCE for such deliveries.

**(b) Payment Invoice and Payment for Startup Period.**

No later than the 10<sup>th</sup> Business Day immediately following each calendar month in which SCE forwarded Seller settlement data for the Startup Period in accordance with Section 1.02(a) hereof, Seller shall send a Payment Invoice to SCE. The Payment Invoice will show the sum of the CAISO Costs and CAISO Revenues that are directly assigned by the CAISO to the CAISO Resource ID(s) for the Generating Facility for the energy delivered to the Real-Time Market during the Startup Period and any CAISO Sanctions and SCE Penalties.

- (i) If a Payment Invoice for any month shows an amount owed to Seller by SCE, then, on or before the later of the last Business Day of the month in which SCE receives a Payment Invoice from Seller, or the tenth (10<sup>th</sup>) Business Day after receipt of the Payment Invoice, SCE shall send to Seller, via wire transfer, SCE's payment of said 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. If SCE, in good faith, Disputes the correctness of the Payment

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Invoice or a portion thereof, SCE will pay only the undisputed portion of the Payment Invoice and state, in writing, the basis for the Dispute. Payment of the Disputed portion of the Payment Invoice shall not be required until the Dispute is resolved. Upon resolution of the Dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date but excluding the date paid.

- (ii) If for any month during the Startup Period there is an amount owed to SCE by Seller, then Seller shall send to SCE, via wire transfer, Seller's payment of said net amount no later than the tenth (10<sup>th</sup>) Business Day after Seller sends SCE its Payment Invoice. If such payment is late, Seller shall include with its payment a Simple Interest Payment calculated using the Interest Rate and the number of days that such payment is late.

1.03 Recomputation and Payment Adjustments for Startup Period.

- (a) If Seller or SCE determines that:
  - (i) The CAISO has recalculated CAISO Costs, CAISO Revenues or CAISO Sanctions for energy delivered to any CAISO administered market during the Startup Period; or
  - (ii) A calculation of Metered Amounts, CAISO Costs, CAISO Revenues, or CAISO Sanctions is incorrect as a result of inaccurate meters, the correction of data by the CAISO in OMAR, or a recalculation of CAISO Charges by the CAISO; or
  - (iii) SCE has recalculated an SCE Penalty in accordance with Exhibit Q, SCE or Seller shall promptly recompute the difference between the CAISO Costs, CAISO Revenues or CAISO Sanctions in the original Payment Invoice and the adjusted CAISO Costs, CAISO Revenues, or CAISO Sanctions for the period of the inaccuracy and provide Notice of such recomputation to the other Party.
- (b) Any amount due from SCE to Seller, or Seller to SCE, as the case may be, will be made as an adjustment to the next monthly Payment Invoice that is calculated after the recomputation using corrected CAISO Costs, CAISO Revenues, or CAISO Sanctions or SCE Penalties, if applicable.
- (c) If the recomputation results in a net amount owed to SCE after applying any amounts owing to Seller as shown on the next monthly Payment Invoice, any such additional amount owing to SCE will at SCE's discretion be netted against amounts owed to Seller in any subsequent monthly Payment Invoice, or separately invoiced to Seller, in which case Seller must pay the amount owing to SCE no later than the 10th Business Day after receipt of the Payment Invoice.

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- (d) Seller or SCE must make any payment adjustments arising from a recalculation of CAISO Costs, CAISO Revenues, CAISO Sanctions, SCE Penalties, if applicable, or as a result of inaccurate meters attributable to energy deliveries during the Startup Period by no later than twelve (12) months after the end of the Startup Period.
- (e) Adjustment payments for CAISO Costs, CAISO Revenues, CAISO Sanctions, or SCE Penalties, if applicable, will not bear interest.
- B. [Intentionally omitted]
- C. **COST RESPONSIBILITY, INVOICING AND PAYMENTS DURING THE TERM.**

3.01 Cost Responsibility Upon Commercial Operation.

(a) SCE Cost Responsibility.

Upon the Commercial Operation Date and for the remainder of the Term:

- (i) Except under the circumstances set forth in Section 4.01(c), SCE shall make monthly Product Payments to Seller for Product delivered to SCE calculated in the manner described in Section 3.02 below and Exhibit Q;
- (ii) Except as set forth in Exhibit Q, SCE shall be responsible for all CAISO Costs and CAISO Sanctions and have the right to receive all CAISO Revenues;
- (iii) To the extent that SCE requires Seller to participate in the PIRP/EIRP program, SCE shall be responsible for PIRP/EIRP forecasting fees.

(b) Seller Cost Responsibility.

Upon the Commercial Operation Date and for the remainder of the Term:

- (i) If Seller fails to comply with the Forecasting provisions set forth in Exhibit D, Seller shall pay an SCE Penalty as set forth in Exhibit Q.
- (ii) Seller shall be responsible for CAISO Costs and CAISO Sanctions, under the circumstances specified in Sections 4.01(c) and 4.03(d).
- (iii) Seller shall make monthly Payments calculated in the manner described in Section 3.02 below and Exhibit Q.

3.02 Product Payment Calculations After Commercial Operation Date.

For the purpose of calculating monthly payments for Product delivered to SCE as of the Commercial Operation Date in accordance with the terms of this Agreement ("Product Payments"), Metered Amounts will be time-differentiated according to the TOD Periods set forth in Exhibit K and the pricing will be weighted by the Product Payment Allocation Factors set forth in Exhibit K.



Monthly Product Payments will equal the sum of (i) the sum of the TOD Period Product Payments for all TOD Periods in the month and (ii) the Curtailed Product Payment. Each TOD Period Product Payment will be calculated pursuant to the following formula, where “n” is the TOD Period being calculated:

$$\text{TOD PERIOD}_n \text{ PRODUCT PAYMENT} = A \times B \times (C - D)$$

Where:

- A = Product Price specified in Section 1.07, in \$/kWh (i.e., \$/MWh/1000).
- B = Product Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.
- C = The sum of Metered Amounts in all hours for the TOD Period being calculated in kWh.
- D = Any electric energy produced by the Generating Facility for which SCE is not obligated to pay Seller as set forth in Section 4.01(c).

**3.03 Payment Statement and Invoices during the Term.**

Upon the Commercial Operation Date and for the remainder of the Term, no later than the 10<sup>th</sup> Business Day immediately following each calendar month during the Term Year during which: (w) Metered Amounts are provided to SCE; (x) CAISO Sanctions or any SCE Penalties are incurred by Seller; (y) there is Curtailed Product or OSGC Quantity; or (z) Adjustments for payment errors are made as set forth below; Seller shall send a Payment Invoice to SCE showing:

- (a) The Metered Amounts for each TOD Period during the month for which the payment is being made;
- (b) The amount of Curtailed Product and OSGC Quantity, if any;
- (c) A calculation of the amount payable to Seller for the month pursuant to Section 3.02 of this Exhibit E; and
- (d) A calculation of the net amount due either to Seller or SCE.

**3.04 Payment during the Term.**

On or before the later of the last Business Day of the month in which SCE receives a Payment Invoice from Seller, or the tenth (10<sup>th</sup>) Business Day after receipt of the Payment Invoice, or, if such day is not a Business Day, then on the next Business Day, SCE shall:

- (a) Send to Seller, via wire transfer, SCE’s payment of said net amount, less any applicable SCE Penalties, CAISO Costs or CAISO Sanctions per Exhibit Q, or other applicable charges or offsets 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;

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

- (b) If SCE, in good faith, Disputes the correctness of the Payment Invoice or a portion thereof, SCE will pay only the undisputed portion of the Payment Invoice and state, in writing, the basis for the Dispute. Payment of the Disputed portion of the Payment Invoice shall not be required until the Dispute is resolved. Upon resolution of the Dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date but excluding the date paid; and
- (c) Provide Seller with documentation supporting any SCE Penalty, CAISO Cost or CAISO Sanction, per Exhibit Q, or other applicable charges and offsets which affected the net amount in the Payment Invoice.

### 3.05 Recomputation and Payment Adjustments.

- (a) If Seller or SCE determines that a calculation of Metered Amounts, CAISO Sanctions, or SCE Penalties is incorrect as a result of inaccurate meters, the correction of data by the CAISO in OMAR, or a recalculation of CAISO Sanctions or other amounts owing between the Parties, Seller or SCE, as the case may be, shall promptly recompute the Metered Amounts, CAISO Sanctions, SCE Penalties or other amounts for the period of the inaccuracy based upon an adjustment of inaccurate meter readings, correction of data or recalculation of CAISO Sanctions in accordance with the CAISO Tariff and any payment affected by the adjustment or correction.
- (b) Adjustment of Payment.

Any amount due from SCE to Seller, or Seller to SCE, as the case may be, will be made as an adjustment to the next monthly payment statement that is calculated after Seller's or SCE's recomputation using corrected measurements.

If 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 amount owing to SCE will at SCE's discretion be netted against amounts owed to Seller in any subsequent monthly Payment Invoice or separately invoiced to Seller, in which case Seller must pay the amount owing to SCE within twenty (20) days after receipt of that invoice.

SCE may make payment adjustments arising from a recalculation of CAISO Costs, CAISO Sanctions, SCE Penalties, or as a result of inaccurate meters after the end of the Term Year, *provided*, the Parties will be deemed to have waived any such payment adjustments which are not communicated as provided in this Section 3.05 of this Exhibit E within twelve (12) months after the end of the month in which the payment statement was issued containing the error.

Adjustment payments for meter inaccuracy will not bear interest.

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## 3.06 Netting Rights.

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

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

Nothing in this Section 3.06 limits SCE's rights under applicable tariffs, other agreements or Applicable Law.

## **D. PAYMENT ERRORS**

### 4.01 Notice of Error in Payment.

Except as provided in Sections 1.03, 2.03 and 3.05 of this Exhibit E, if within forty-five (45) days after receipt of SCE's Payment, Seller does not give SCE Notice of an error in the payment amount, then Seller will be deemed to have waived any error in the payment.

### 4.02 Reimbursement for Underpayments and Overpayments.

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

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

### 4.03 Late Payments.

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

### 4.04 Netting after Recomputation.

If the recomputation for an error 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 Invoice to Seller or invoice Seller for such amount, in which case

Seller must pay the amount owing to SCE within twenty (20) days after receipt of such invoice.

4.05 Resolution of Disputes.

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

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



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

**FILED**  
07-21-11  
04:59 PM

Order Instituting Rulemaking to Continue )  
Implementation and Administration of California ) Rulemaking 11-05-005  
Renewables Portfolio Standard Program. ) (Filed May 5, 2011)  
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**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)**  
**COMMENTS TO SECTION 399.20 RULING DATED JUNE 27, 2011**

MICHAEL D. MONTOYA  
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Dated: July 21, 2011

**SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)  
COMMENTS ON SECTION 339.20 RULING DATED JUNE 27, 2011**

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Section 399.20 tariff be paid at the market price referent (“MPR”) set by the California Public Utilities Commission (“Commission” or “CPUC”).

The Section 399.20 Ruling makes an initial proposal for implementing SB 32’s and SB 2 1X’s amendments to Section 399.20 and asks for party comments on that proposal. Along with the other parties, SCE filed opening and reply briefs regarding implementation of SB 32 in March 2011.<sup>1</sup> SCE does not repeat the arguments included in those briefs here. As discussed below, SCE recommends that that pricing under Section 399.20 be established using a pricing methodology that looks to the market to establish pricing. This approach is consistent with the requirements of the Renewables Portfolio Standard (“RPS”) statute and federal law, and will allow the Commission to implement a Section 399.20 tariff program that meets the State’s RPS goals while minimizing customer costs in accordance with the ratepayer indifference requirement included in Section 399.20. The Commission has already determined a market-based mechanism is appropriate for pricing of standard power purchase agreements for renewable generators 20 MW and under in its recently adopted Renewable Auction Mechanism (“RAM”) program. Similarly, market-based pricing is both appropriate, and consistent with legal requirements, for the Section 399.20 program.

In contrast, a Commission-established requirement that utilities pay Section 399.20 generators the MPR is unlawful under the Federal Power Act. It would also require utility customers to pay such generators an administratively-determined price that is not consistent with actual market conditions. This is likely to lead to higher prices for customers and is contrary to Section 399.20’s ratepayer indifference mandate.

Finally, the Section 399.20 Ruling proposes that the Commission will implement certain portions of SB 32 and SB 2 1X by the end of 2011, and other statutory provisions, such as denial of tariff requests and contract termination provisions, in 2012. SCE understands the Commission

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<sup>1</sup> See Southern California Edison Company’s (U 338-E) Opening Brief Regarding Implementation of Senate Bill 32, R.08-08-009 (March 7, 2011) (“March Opening Brief”); Southern California Edison Company’s (U 338-E) Reply Brief Regarding Implementation of Senate Bill 32, R.08-08-009 (March 22, 2011) (“March Reply Brief”).

Adequacy (“RA”) obligations, SCE recommends that the Commission adopt a market-based methodology for determining the price to be paid for eligible power.<sup>2</sup>

A market-based methodology has many benefits. First, it is consistent with SCE’s Commission-approved least-cost, best-fit procurement strategy, and ensures that SCE’s customers will get the best value for their procurement dollars. Second, this methodology ensures that the price for Section 399.20 contracts will take into account the factors enunciated in the statute. For example, a market-based pricing mechanism is consistent with determining the “long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation’s general procurement activities as authorized by the commission.”<sup>3</sup> Indeed, the pricing for most of SCE’s long-term electricity procurement is set through similar market-based processes (e.g., RPS solicitations, the RAM program, All-Source Requests for Offers). The “long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities” will also be reflected.<sup>4</sup> Moreover, a market-based process will allow the “current and anticipated environmental compliance costs” discussed in Section 399.20(d)(1) to be included. Further, using a market-based methodology allows evaluation of “different electricity products including baseload, peaking, and as-available electricity,” as required by Section 399.20.<sup>5</sup>

Third, and perhaps most importantly, SCE’s proposed market-based methodology avoids the legal and practical pitfalls of establishing an administratively-determined price with static inputs and assumptions that cannot respond to market conditions. For example, the MPR benchmark established by the Commission and advocated by certain parties as the price for Section 399.20 contracts does not reflect market conditions. Indeed, prices for SCE contracts

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<sup>2</sup> SCE will provide additional details on its market-based approach in its filing on August 5, 2011. The expedited schedule associated with these comments, proposed tariffs, and contracts and related documents did not allow SCE to develop all of the details of its proposal by July 21, 2011.

<sup>3</sup> Cal. Pub. Util. Code § 399.20(d)(2)(A). Unless otherwise noted, references to Section 399.20 are to Section 399.20 as amended by both SB 32 and SB 2 1X.

<sup>4</sup> Cal. Pub. Util. Code § 399.20(d)(2)(B).

<sup>5</sup> Cal. Pub. Util. Code § 399.20(d)(2)(C).



### 3.2 Continued Reliance on Market Price Referent

Consistent with SCE's comments above, SCE does not support using the current MPR to establish the price for Section 399.20 tariff contracts. As explained in the Section 399.20 Ruling, SB 2 1X modifies Section 399.20 so that payment under the tariff need not be set at the MPR established by the Commission.<sup>8</sup> This statutory change allows the Commission to set a lawful price under Section 399.20 since, as further detailed in SCE's March Opening Brief and March Reply Brief, setting the tariff price using the MPR would be unlawful.<sup>2</sup>

Recent Federal Energy Regulatory Commission ("FERC") orders reaffirm that states and state commissions have limited jurisdiction to set wholesale power prices.<sup>10</sup> Specifically, states and state commissions may only set prices for purchases from QFs, and those prices may not exceed the avoided costs of the purchasing utility pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA").<sup>11</sup> Other than this limited exception, states and state commissions have no other jurisdiction to set wholesale power prices.

Section 399.20 does not require that a generator apply for or obtain QF status; thus, there is no guarantee that the generators participating in the Section 399.20 program will be QFs. Additionally, as SCE explained in its March Opening Brief and March Reply Brief, the MPR was never intended to be a price for power, or reflect the avoided cost of power.<sup>12</sup> Rather, the MPR was a benchmark developed as a part of a cost limitation mechanism for the procurement of renewable resources under the RPS program. The Commission also uses the MPR as a *per se* reasonableness benchmark for RPS contract approval. The Commission decisions that developed the MPR and MPR methodology have never determined that the MPR is an avoided cost pursuant to PURPA, nor even addressed the issue. Instead, in those decisions, the

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<sup>8</sup> Section 399.20 Ruling at 2-4. *See also* Cal. Pub. Util. Code § 399.20(d)(1)-(2).

<sup>2</sup> *See* March Opening Brief at 3-9; March Reply Brief at 3-5.

<sup>10</sup> *See* 132 FERC ¶ 61,047.

<sup>11</sup> *See id.* at P 67.

<sup>12</sup> *See* March Opening Brief at 5-6; March Reply Brief at 4.

would be unreasonable for ratepayers. If it is too low, no projects would be built.”<sup>16</sup> The Commission adopted a market-based pricing mechanism for the RAM program, holding that:

We endorse healthy competition and seek to avoid regulatory approaches that result in hostility from ratepayers or undermine long-term market stability. We also look for an approach that can quickly respond to changes in cost (both increases and decreases). Administrative determination of contract prices is less likely to be as responsive to cost changes than is a seller determining the price it wishes to seek in an auction based on its understanding of the underlying project costs, and changes in those costs.<sup>17</sup>

The same reasoning applies to the Section 399.20 program. Accordingly, use of the MPR for pricing the Section 399.20 contracts should be rejected.

Because SCE urges the Commission to reject using the MPR to establish the price for Section 399.20 tariff contracts, and SB 2 1X eliminates the MPR as it is currently calculated, SCE believes the Commission should not continue to calculate the MPR.

### **3.3 Additional Pricing Proposals**

#### **3.3.1 Technology-Specific Rates and Product-Specific Rates**

As referenced above, SCE does not support technology-specific pricing. SCE’s procurement strategy is technology neutral and SCE’s procurement is based on least-cost, best-fit principles that are fundamentally inconsistent with technology-specific pricing. The RPS program is technology neutral among eligible renewable technologies, and Section 399.20 does not create any special rules for different technologies. It would be inconsistent with the RPS statute and least-cost, best-fit principles to create artificial carve-outs for specific renewable technologies. Under the ratepayer indifference standard in Section 399.20, customers cannot be required to pay more for one RPS-eligible technology than they would pay for another, because either technology will satisfy the State’s RPS goals. If the Commission sets technology-specific prices, these prices will differ amongst technologies, and SCE’s customers will pay more for certain technologies, even though those technologies do not allow SCE’s customers to avoid any

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 17.

strategies to use the prices in other executed renewable power purchase agreements to *inform* whether the pricing in a given market is consistent with prevailing market conditions. For example, if all of the projects in a given solicitation come in at a single inflated price, then SCE would use pricing data from other programs on a qualitative basis to assess whether market manipulation has occurred.

### **3.4 Additional Pricing Questions**

SCE's recommended market-based approach will reflect market conditions, which are the best data source to use for assessing the appropriate pricing for Section 399.20 contracts.

### **3.5 Ratepayer Indifference**

Section 399.20 provides that the "commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives services pursuant to the tariff."<sup>19</sup> This means that any compensation for Section 399.20 power must leave other customers unaffected. That is, customers should be no worse off as a result of the power purchased pursuant to Section 399.20 tariff contracts. If costs incurred by customers who do not participate in the Section 399.20 program *increase* as a result of others' participation in the program, the ratepayer indifference standard will be violated.

Generally, an avoided cost rate, *assuming it is appropriately calculated*, will result in ratepayer indifference because an avoided cost rate is by definition the incremental costs to the buyer which, but for the mandated purchase, the buyer would generate itself or purchase from another source.<sup>20</sup> However, unlike Clean Coalition, SCE does not agree with the Commission's application of the customer indifference provision in its implementation of Assembly Bill ("AB") 1613 because, among other things, the Commission focused on benefits to buyers rather than the costs avoided through the purchase of AB 1613 power, in contravention of PURPA, and

<sup>19</sup> Cal. Pub. Util. Code § 399.20(d)(4).

<sup>20</sup> 18 C.F.R. § 292.101(b)(6) ("Avoided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.").

#### **4 Compliance with SB 32**

The Section 399.20 Ruling identifies those provisions added to Section 399.20 by SB 32 and SB 2 1X that the Commission proposes to implement by the end of 2011 – determine price, eliminate separate tariffs, eliminate retail customer requirement, increase facility size to 3 MW, adjust program cap to 750 MW, the 10-day internet posting requirement for new tariff requests, the exemption for small electric utilities, and coordination with POU's – and those portions of the statute the Commission intends to wait to address in 2012 – yearly inspection and maintenance reports required by Section 399.20(p), denial of tariff requests set forth in Section 399.20(n), contract termination provisions in Section 399.20(l), the expedited interconnection process set forth in Section 399.20(e), and refunds of other incentives as provided in Section 399.20(k).<sup>24</sup>

SCE understands the Commission intends to implement revised Section 399.20 tariffs and contracts by the end of 2011. Given this plan, SCE opposes deferral of any of the issues identified in the Section 399.20 Ruling until 2012, except for expedited interconnection procedures. The various requirements of Section 399.20 are interrelated. The Commission cannot adopt revised tariffs and contracts without addressing the statutory provisions allowing utilities to deny tariff requests, termination provisions for those contracts, required reporting from facilities receiving tariffs, or issues surrounding the refunds of other incentives that affect eligibility for the Section 399.20 tariff. All of these are statutory requirements that must be resolved to implement Section 399.20 tariffs and contracts. For example, the Commission cannot require utilities to offer tariffs without allowing them to exercise their statutory rights to deny such tariffs in some circumstances. Similarly, both generators and utilities need certainty as to how the receipt of other incentives will affect eligibility for the Section 399.20 tariff. As such, SCE believes that carving out any of these issues for later resolution will ultimately prove unworkable, and will result in further delays in program implementation.

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<sup>24</sup> Section 399.20 Ruling at 5.

#### **4.5 Yearly Inspection and Maintenance Report**

As discussed above, yearly inspection and maintenance reports are a statutory requirement that should be implemented in the Section 399.20 contract and not deferred until a later date. SCE will include such a requirement in its proposed contract filed on August 5, 2011.

#### **4.6 10-Day Reporting Requirement of Request for Service Under Tariff**

SCE provided its comments on this issue in its March Opening Brief.<sup>29</sup>

#### **4.7 Publicly-Owned Electric Utilities**

SCE does not have any comments on this issue at this time.

#### **4.8 Utility Discretion to Deny Tariff**

As explained above, the Commission must address utility discretion to deny tariffs along with other Section 399.20 issues before a tariff and contract can be implemented. SCE proposed certain denial rights in its March Opening Brief,<sup>30</sup> and will provide any additional detail to implement its proposal in its August 5, 2011 filing. SCE currently denies counterparties a CREST tariff if they do not have an executed Interconnection Facilities Financing and Ownership Agreement (“IFFOA”) or if they are participating in the California Solar Initiative or Net Energy Metering. Each of these items would make the counterparty non-compliant with program requirements.

#### **4.9 Tariff or Contract Termination Provisions**

The Commission must address contract termination provisions before a tariff and contract can be implemented as discussed above. SCE proposed certain termination rights in its March Opening Brief,<sup>31</sup> and will provide any additional detail to implement its proposal in its August 5, 2011 filing. For existing contracts, the terms and conditions of those contracts determine the conditions under which SCE or the seller may terminate the contract, or how the contract terminates automatically.

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<sup>29</sup> See *id.* at 26-27.

<sup>30</sup> See *id.* at 24-25.

<sup>31</sup> See *id.* at 19-20.

deliverability studies that are essential to the generators' ability to provide RA credit. However, the WDAT (for distribution level interconnections) and the CAISO tariff (for transmission level interconnections) do address the studies required for certification for RA credit. Because Section 399.20 requires that generators provide RA credit, and the WDAT and CAISO interconnection procedures are the only procedures which provide for such certification, the Commission should approve use of these tariffs. However, if, after development of all relevant program parameters, the Commission determines that Rule 21 is the appropriate interconnection path for Section 399.20 generators, SCE urges the Commission to allow SCE to utilize the FERC-jurisdictional interconnection procedures until Rule 21 can be revised to provide for the studies necessary for a generator to be eligible to provide RA credit.

#### **4.11 Adjustments for Small Electric Utilities**

For the reasons discussed in its March Opening Brief, SCE opposes exempting small utilities from the Section 399.20 program.<sup>33</sup>

#### **4.12 Refunds of Other Incentives**

As stated above, SCE recommends addressing issues surrounding Section 399.20(k) in coordination with other Section 399.20 implementation issues. SCE's proposal to implement this section was addressed in its March Opening Brief.<sup>34</sup>

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<sup>33</sup> See March Opening Brief at 15-16.

<sup>34</sup> See *id.* at 25-26.

**VERIFICATION**

I am a Manager in the Renewable and Alternative Power of Southern California Edison Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this **21<sup>st</sup> day of July, 2011**, at Rosemead, California.

/s/ Laura Genao

By: Laura Genao

SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770

**EXHIBIT F***Product Replacement Damage Amount*

In accordance with the provisions of Section 3.07, if at the end of any Term Year, commencing with the end of the second Term Year, Seller fails to meet Seller's Energy Delivery Obligation over the Calculation Period, then Seller shall be subject to a Product Replacement Damage Amount penalty calculated as follows:

PRODUCT REPLACEMENT DAMAGE AMOUNT =

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

Where:

- A = Seller's Energy Delivery Obligation in kWh.
- B = Sum of Qualified Amounts over the Calculation Period in kWh.
- C = Sum of Lost Output over the Calculation Period in kWh.
- D = Simple average of the Green Market Price for all Settlement Intervals during the Calculation Period in \$/kWh.
- E = The applicable price for the Product, in \$/kWh (i.e., \$/MWh/1000), as set forth in Section 1.07 and Exhibit E.

Notes:

1. In the above calculation, the result of "(D - E)" will not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh.
2. In no event will SCE pay a Product Replacement Damage Amount.

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

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**EXHIBIT G**  
*Seller's Milestone Schedule*

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	Aug 12, 2011	Execute the Interconnection Agreement
2	Dec 31, 2011	Receives FERC acceptance of interconnection agreement
3	May 17, 2011	File California Environmental Quality Act (CEQA) Permit Application
4	Mar 2007	File Application for Right of Way (ROW) grant (SF 299) [ <i>This satisfies the application for a National Environmental Policy Act (NEPA) Permit</i> ]
5	Feb 28, 2013	File a CEC Pre-Certification application
6	Aug 31, 2013	Receives CEC Pre-Certification
7	Jan 31, 2014	File for 2081 (Incidental Take) Permit from California Department of Fish and Game (CDFG)
8	Jan 31, 2014	File for 1601 (Streambed Alteration Agreement) Permit from CDFG
9	Apr 30, 2014	Obtains control of privately owned rights-of-way and lands comprising the Site
10	Sep 30, 2014	Receive Biological Opinion (BO) from US Fish and Wildlife Service [Note: Application for BO is made by BLM]
11	Oct 31, 2014	Receive Record of Decision, ROW Grant
12	Oct 31, 2014	Receive CEQA Permit
13	Oct 31, 2014	Executes an Engineering contract
14	Dec 31, 2014	Receive 2081 and 1601 permits from CDFG
15	Jan 31, 2015	Receive Notice to Proceed from BLM

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16	Jan 31, 2015	Receive Notice to Proceed from CEQA permitting authority
17	Mar 31, 2015	Begins construction of the Generating Facility
18	Feb 28, 2015	Initial Procurement of Photovoltaic Modules and Current Inverters
19	Aug 31, 2015	Begins startup activities
20	Sep 30, 2015	Initial Synchronization Date
21	Sep 30, 2015	Begin Test Energy Production
22	Nov 30, 2016	Commercial Operations Date
23	Dec 31, 2016	Demonstrates the Contract Capacity
23	May 31, 2017	Receives CEC Certification

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

**EXHIBIT G-1**

*Seller's Material Construction Permits*

<i>No.</i>	<i>Date</i>	<i>Permits</i>
1	Dec 31, 2016	Receive Notice to Proceed from BLM
		File Application for Right of Way (ROW) grant (SF 299)
		Receive Record of Decision, ROW Grant
		Receive Biological Opinion (BO) from US Fish and Wildlife Service [NOTE: Application for BO is made by BLM]
2	Dec 31, 2016	Receive Notice to Proceed from CEQA permitting authority
		File California Environmental Quality Act (CEQA) Permit Application
		File for 2081 (Incidental Take) Permit from California Department of Fish and Game (CDFG)
		File for 1601 (Streambed Alteration Agreement) Permit from CDFG
		Receive CEQA Permit
		Receive 2081 and 1601 permits from CDFG

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**EXHIBIT G-2**  
*Seller's Material Permits*

<i>No.</i>	<i>Permits</i>
1	National Environment Policy Act (Bureau of Land Management Right of Way Grant)
2	California Environmental Quality Act (Conditional Use Permit or equivalent)
3	California Department of Fish and Game 2081 Incidental Take Permit
4	California Department of Fish and Game 1601 Streambed Alteration Agreement
5	US Fish and Wildlife Service Biological Opinion (Section 7 consultation)

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

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**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 must be sent via e-mail 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 begins on the first day of the first full calendar month after the Effective Date of this Agreement and ends immediately after a Milestone Progress Reporting Form is completed and submitted for the month following the month in which Seller demonstrates the Contract Capacity in accordance with Exhibit L.

Each Milestone Progress Report must include the following items:

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

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**EXHIBIT I***Form of Collateral Assignment Agreement***CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT**

This Consent to Collateral Assignment Agreement (this "Consent") is entered into between (i) Southern California Edison Company, a California corporation ("SCE"), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the "Project Company"), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Agreement referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the "Secured Parties", and, such agent, together with its successors in such capacity, the "Collateral Agent"). SCE, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties".

**RECITALS**

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and SCE have entered into that certain Renewable Power Purchase and Sale Agreement, dated as of *[Date]* ("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 include Development Security, Performance Assurance or Secured Interests (each as defined in the Power Purchase Agreement and collectively, 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 *[Date]*, among Project Company, the Lenders party thereto and the Collateral 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 Collateral Agent pursuant to the Financing Agreement; and

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- 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.

AGREEMENT

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 hereby acknowledges:

- (a) notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and
- (b) the right (but not the obligation) of Collateral 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 rights and defenses under the Power Purchase Agreement and the terms of this Consent) and accepts any such exercise; provided, however, that, insofar as the Collateral Agent exercises any such 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 Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that SCE is authorized to act in accordance with Collateral Agent's instructions, and that SCE shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 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 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

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suspend its performance under the Power Purchase Agreement or foreclose on its Junior Lien (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 Collateral Agent and affords Collateral Agent the right to cure such Power Purchase Agreement Default within the applicable cure period under the Power Purchase Agreement, which cure period shall run concurrently with that afforded Borrower under the Power Purchase Agreement. In addition, if Collateral Agent gives SCE written notice prior to the expiration of the applicable cure period under the Power Purchase Agreement of Collateral Agent's intention to cure such Power Purchase Agreement Default (which notice shall include a reasonable description of the time during which it anticipates to cure such Power Purchase Agreement Default) and is diligently proceeding to cure such Power Purchase Agreement Default, notwithstanding the applicable cure period under the Power Purchase Agreement, Collateral 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 the Collateral Agent's 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 Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the Power Purchase Agreement Default and is diligently pursuing such foreclosure proceedings, Collateral 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 Collateral 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 Collateral 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, Collateral 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. Collateral Agent shall provide SCE with reports concerning the status of efforts to cure a Power Purchase Agreement Default upon SCE's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral 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, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the Power Purchase Agreement, and, subject to Section

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1.7(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 (including those obligations accruing to SCE and the Project Company prior to the existence of the Substitute Owner) under the Power Purchase Agreement in favor of each other in accordance with the terms thereof; provided, however, that before SCE is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to SCE's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD]. For purposes of the foregoing, SCE shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the Power Purchase Agreement is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, 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 Collateral Agent or its designee 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) ("Replacement Owner"), SCE shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the Power Purchase Agreement remaining to be performed having terms substantially the same as the terms of the Power Purchase Agreement with respect to the remaining Term ("Replacement Power Purchase Agreement"); *provided*, that before SCE is required to enter into a Replacement Power Purchase Agreement, the Replacement Owner must have demonstrated to SCE's reasonable satisfaction that the Replacement Owner has financial qualifications and operating experience [TBD]. For purposes of the foregoing, SCE is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. 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 1.5, 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 of Project Company under the Power Purchase Agreement or Replacement Power Purchase Agreement have been cured.

#### 1.6 Transfer.

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Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the Power Purchase Agreement and a Replacement Power Purchase Agreement to a Person that has demonstrated to SCE's reasonable satisfaction that such proposed assignee has financial qualifications and operating experience [TBD].

## 1.7 Assumption of Obligations.

### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to SCE all of the obligations of Project Company, Substitute Owner or Replacement Owner under the Power Purchase Agreement or Replacement Power Purchase Agreement, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding Power Purchase Agreement Default, Collateral Agent shall be released from any further liability under the Power Purchase Agreement or Replacement Power Purchase Agreement, as applicable.

### (b) No Liability.

SCE acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the Power Purchase Agreement as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner) nor shall Collateral 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 1.7(a), or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement Power Purchase Agreement, Collateral 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 Collateral 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 Collateral Agent, or SCE's rights with respect to any offset rights expressly allowed under the Power Purchase Agreement, a Replacement Power Purchase Agreement or the PPA Collateral.

## 1.8 Delivery of Notices.

SCE shall deliver to Collateral 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

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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 Collateral Agent or the Lenders pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy SCE's obligation to give Collateral Agent a notice of Power Purchase Agreement Default under Section 1.3. Collateral Agent shall deliver to SCE, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents (a "Financing Document Event of Default").

#### 1.9 Confirmations.

SCE will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the Power Purchase Agreement (including the performance of same by Project Company); provided, however, that such confirmations may be limited to matters of which SCE is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of SCE under the Power Purchase Agreements as between SCE and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until SCE receives a Financing Document Event of Default, SCE shall deal exclusively with Project 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 1.4, a Replacement Power Purchase Agreement is entered into or the Power Purchase Agreement is transferred to a Person to whom the Project is transferred pursuant to Section 1.7, SCE shall, until Collateral Agent confirms to SCE in writing that all obligation under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of SCE's obligations under the Power Purchase Agreement, and SCE may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by applicable law, SCE agrees that it will not, without the prior written consent of Collateral 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, company, limited liability company, partnership, Governmental Authority or other entity (a "Person"), (c) terminate or suspend its performance under the Power Purchase Agreement (except in

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accordance with Section 1.3) or (d) consent to or accept any termination or cancellation of the Power Purchase Agreement by Project Company.

## SECTION 2. PAYMENTS UNDER THE POWER PURCHASE AGREEMENT

### 2.1 Payments.

Unless and until SCE receives written notice to the contrary from Collateral 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. SCE, Project Company, and Collateral 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 Collateral 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 Collateral 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

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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 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 No Default or Amendment.

Neither SCE nor, to SCE's actual knowledge, Project Company, is in default of any of its obligations under the Power Purchase Agreement. SCE and, to SCE's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the Power Purchase Agreement (except as disclosed to Collateral Agent). To SCE's actual 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.

### 3.5 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 Collateral Agent and SCE:

### 4.1 Organization.

Project Company is a [Legal Status of Seller] duly organized and validly existing under the laws of the state of its organization, 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

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own its properties or its ability to transact its business. Project Company 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.

#### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the Power Purchase Agreement to the Collateral Agent pursuant to the Financing Agreement, have been duly authorized by all necessary corporate or other action on the part of Project Company.

#### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company 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).

#### 4.4 No Default or Amendment.

Neither Project Company nor, to Project Company's actual knowledge, SCE, is in default of any of its obligations thereunder. Project Company and, to Project Company's actual knowledge, SCE, has complied with all conditions precedent to the effectiveness of its obligations under the Power Purchase Agreement (except as disclosed to Collateral Agent). To Project Company's actual 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.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the Power Purchase Agreement.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

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

Collateral Agent makes the following representations and warranties as of the date hereof in favor of SCE and Project Company:

5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) 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).

SECTION 6. MISCELLANEOUS

6.1 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 *[Notice Section of the Power Purchase Agreement]* of the Power Purchase Agreement, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[ ]*, Fax: *[ ]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 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 LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. *[This Section will be modified, if necessary, to match the Governing Law Section of the Power Purchase Agreement.]*

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

- (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 6.1 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.

6.3 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.

6.4 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.

6.5 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, Project Company and Collateral Agent.

6.6 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

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Collateral 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.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 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.

6.9 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.

6.10 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.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Defined Terms.

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Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the Power Purchase Agreement.

6.13 Counterparts; Electronic Signatures.

This Consent 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 Consent 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 Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[Remainder of Page Left Intentionally Blank.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

<p><b>[NAME OF PROJECT COMPANY],</b>  <i>[Legal Status of Project Company].</i></p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY,</b>                  a California corporation.</p>
<p><b>By:</b></p> <p>_____</p> <p><i>[Name]</i>  <i>[Title]</i></p> <p>Date: _____</p>	<p><b>By:</b></p> <p>_____</p> <p><i>[Name]</i>  <i>[Title]</i></p> <p>Date: _____</p>
<p><b>[NAME OF SECURTIY AGENT],</b>  <i>[Legal Status of Collateral Agent].</i></p>	
<p><b>By:</b></p> <p>_____</p> <p><i>[Name]</i>  <i>[Title]</i></p> <p>Date: _____</p>	

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

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

**EXHIBIT J**  
*Non-Disclosure Agreement*

[See attached.]

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**NON-DISCLOSURE AGREEMENT**

Between

**SOUTHERN CALIFORNIA EDISON COMPANY**

and

**MCCOY SOLAR, LLC**

This Non-Disclosure Agreement ("Agreement") dated as of April 27, 2011 ("Effective Date") is hereby entered into by and between SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and McCoy Solar, LLC a Delaware limited liability company ("Seller").

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

RECITALS

- A. SCE and Seller have entered into, or wish to enter into, discussions or negotiations ("Negotiations") regarding a possible power purchase and sale agreement for renewable power (the "Potential PPSA").
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Seller to SCE, or any confidential or proprietary information that may be disclosed by SCE to Seller, as part of the Negotiations concerning the Potential PPSA.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. For purposes of this Agreement, all oral or written (including electronic) communications exchanged between the Parties on or after the Effective Date (as set forth in Section 11 of this Agreement) as part of, or arising out of, the Negotiations including the fact that SCE and Seller are in negotiations regarding a Potential PPSA, shall be referred to as "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 must take all necessary precautions and implement all requisite procedures and practices to protect Confidential Information provided by the other Party. Each Party may disclose Confidential Information only to its

employees, directors, advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Potential PPSA ("Permitted Disclosee"), or in subsequent discussions or negotiations regarding the Potential PPSA 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. In addition, the independent evaluator (the "Independent Evaluator") as required in any applicable decision (D.) of the California Public Utilities Commission ("CPUC") is and must be deemed to be a 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 Potential PPSA, 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 and the Independent Evaluator may also disclose Confidential Information to the following entities and their staff and divisions thereof: (i) the 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"), (iv) the Federal Energy Regulatory Commission ("FERC") and (v) 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.

Neither SCE nor the Independent Evaluator shall have any liability whatsoever to any party in the event of any unauthorized use or disclosure by a governmental or regulatory agency or entity, including, without limitation, the CPUC and all divisions thereof, CEC, FERC, PRG or CAISO, of any Confidential Information or other information disclosed to any of them by SCE or its representatives.

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 Seller can demonstrate in writing was already known to SCE or Seller prior to the Effective Date;
  - c. Information which comes to SCE or Seller from a *bona fide* third party source not under an obligation of confidentiality; or
  - d. Information which is independently developed by SCE or Seller 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. Notwithstanding the foregoing, neither Party shall be liable to the other Party for punitive damages.
6. 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, legal compulsion, or with the written consent of the Party providing the Confidential Information or as SCE or Seller 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.
7. All written Confidential Information supplied by a Party, and all copies or translations thereof made by the Party or Permitted Disclosee who received the Confidential Information, shall, upon written request of the Party who initially provided the Confidential Information, be returned to that Party, destroyed, or held and maintained subject to the terms of this Agreement *provided, however*, that a Party or Permitted Disclosee shall not be obligated to return or destroy any Confidential Information contained in its archive computer back-up system and *provided further*, that a Party may retain copies of Confidential Information to the extent that retention is required by applicable law or regulation.
8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
9. Any notice or communication given pursuant to this Agreement shall be in writing and:

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

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

If to SCE:                    Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
Attention: Director, Renewable and Alternative Power  
Telephone:   (626) 302-1212  
Facsimile: (626) 302-1103

If to Seller:                McCoy Solar, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attention: Gregory Schneck, Vice President  
Telephone:   (561) 304-5274  
Facsimile:   (561) 691-7307

10. This Agreement shall be effective as of the Effective Date and shall terminate five years from such date, or earlier upon the mutual written consent of the Parties or as required by applicable law or decision of the CPUC.
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.



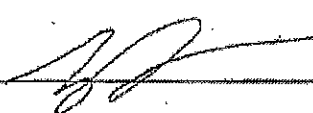
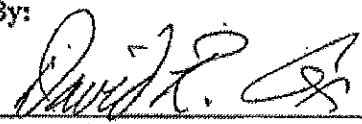
RAP ID #5494, McCoy Solar, LLC

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

*[Remainder of page left blank intentionally.]*

RAP ID #5494, McCoy Solar, LLC

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.

<p>MCCOY SOLAR, LLC, a Delaware limited liability company</p>	<p>SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.</p>
<p>By:  Name: Gregory Schneck Title: Vice President</p>	<p>By:  Name: DAVID R. COX Title: MGR - RENEWABLE &amp; ALT. PWR</p>
<p>Date: 4/27/11</p>	<p>Date: 4/29/11</p>

**EXHIBIT K**  
*Time of Delivery Periods  
 and  
 Product Payment Allocation Factors*

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

<b>Product Payment Allocation Factors</b>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Product Payment Allocation Factor</i>
Summer June - September	On-Peak	Fixed Value.	3.13
	Mid-Peak	Fixed Value.	1.35
	Off-Peak	Fixed Value.	0.75
Winter October - May	Mid-Peak	Fixed Value.	1.00
	Off-Peak	Fixed Value.	0.83
	Super-Off-Peak	Fixed Value.	0.61

"Holiday" is defined as New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

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

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

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## EXHIBIT L

### *Procedure for Demonstration of Contract Capacity and Partial or Full Return of Development Security*

1. Seller's Notice of Demonstration Date.

Seller shall provide at least thirty (30) days prior Notice to SCE of the date selected by Seller ("Demonstration Date"), which Demonstration Date shall be no later than thirty (30) days following the Commercial Operation Date, during which Seller intends to demonstrate the Contract Capacity. Upon SCE's request, Seller shall make reasonable efforts to reschedule the Demonstration Date.

2. Demonstration of Contract Capacity.

SCE shall complete a Site visit on the Demonstration Date 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 and Installed DC Rating.

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 ten (10) Business Days after SCE's Site visit pursuant to Section 2 of this Exhibit L:

- (a) Calculate the amount of Development Security refund due Seller pursuant to Sections 3.06(e) and 3.06(f), as follows:
  - (i) If the Demonstrated Contract Capacity as determined in Section 2 above is greater than or equal to the Contract Capacity set forth in Section 1.01(h) *then* Seller will qualify to receive a full return of the Development Security;
  - (ii) If the Demonstrated Contract Capacity as determined in Section 2 above is less than the Contract Capacity set forth in Section 1.01(h) *then* Seller will qualify to receive a return of only a portion of the Development Security based upon the level of the Demonstrated Contract Capacity;
- (b) Provide Notice to Seller of (i) the amount of the Demonstrated Contract Capacity, and (ii) the amount of Development Security being returned pursuant to this Section 3;
- (c) Return any Development Security due Seller if such Development Security were posted in the form of cash; and
- (d) 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

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*RAP ID #5494, McCoy Solar, LLC*

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 3.06 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 \*\*\**

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## EXHIBIT M

### *Seller's Estimate of Lost Output*

Lost Output, as used in Section 3.22, shall be estimated by Seller in accordance with the procedures described in this Exhibit M.

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

SCE shall have the right to verify all data by inspecting measurement instruments and reviewing Generating Facility Operating records.

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

#### 1. Log of Lost Output Events.

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

- (a) One (1) column for a unique Lost Output Event number;
- (b) One (1) column for the Term Year number;
- (c) One (1) column for the start date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the duration;
- (h) One (1) column for the cause;
- (i) One (1) column for the total of Metered Amounts during all of the Settlement Intervals of the Lost Output Event, recorded as set forth in Item 4(i) in this Exhibit L;
- (j) One (1) column for the total of the Lost Output *preliminary* results during all of the Settlement Intervals of the Lost Output Event, calculated as set forth in Item 4(j) in this Exhibit L;
- (k) One (1) column for a percentage calculated by *dividing* the preliminary results set forth in Item 1(j) of this Exhibit L *by* the Metered Amounts set forth in Item 1(i) of this Exhibit L;
- (l) One (1) column for the total of the Lost Output *final* results during all of the Settlement Intervals of the Lost Output Event, calculated as set forth in Item 4(k) in this Exhibit L; and

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- (m) One (1) row for each Lost Output Event.

## 2. Generating Facility Energy Yield Curve.

Seller shall create a Generating Facility Energy Yield Curve table on a single dedicated worksheet that is arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the plane of array insolation;
- (c) One (1) column for the manufacturer's estimate of the electric energy that can be produced by a single Inverter Block Unit at each increment of plane of array insolation;
- (d) Multiple columns for a energy yield curve which estimates the electric energy that could be produced by the entire Generating Facility at each plane of array insolation increment and number of in service Inverter Block Units calculated by:
  - (i) *Multiplying* the Inverter Block Unit manufacturer's estimate of the electric energy that will be produced by a single unit, set forth in Item 2(c);
  - (ii) *Times* the total number of in service Inverter Block Units; and then
  - (iii) *Adjusting* the results for the estimated impacts of one (1) Inverter Block Unit on another and for electric losses within the Generating Facility;
- (e) Multiple columns for each Term Year energy yield curve which includes a simple average of all Metered Amount data points, set forth in Item 3(f), at each plane of array insolation increment and number of in service Inverter Block Units; and
- (f) One (1) row for each watt-hour per square meter of plane of array insolation.

Seller shall also create a single chart which plots all of energy yield curves set forth in Item 2(d) and Item 2(e) of this Exhibit M on the Generating Facility Energy Yield Curve worksheet.

## 3. Plane of Array Insolation Data Collection.

Seller shall record Settlement Interval plane of array insolation, in watt-hours per square meter, and Metered Amounts in the Settlement Interval in the Lost Output Workbook on individual Term Year worksheets.

Each Term Year worksheet must 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;

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- (d) One (1) column for the weekday;
- (e) One (1) column for each recorded plane of array insolation measurement;
- (f) One (1) column for each Metered Amounts quantity;
- (g) One (1) column for a forecast of Metered Amounts determined by:
  - (i) *Multiplying* the recorded plane of array insolation measurement set forth in Item 3(e) of this Exhibit M;
  - (ii) *Times* the appropriate value in the Generating Facility Energy Yield Curve, set forth in Item 2(e) of this Exhibit M, for the first Term Year;
- (h) One (1) column for the number of Inverter Blocks in service; and
- (i) One (1) row for each Settlement Interval period.

4. Detailed Estimate of Lost Output.

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

- (a) One column for an item number;
- (b) One (1) column for the Lost Output Event number;
- (c) One (1) column for the state date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the weekday;
- (h) One (1) column for the plane of array insolation;
- (i) One (1) column for Metered Amounts;
- (j) One (1) column for the number of Inverter Block Units in service.
- (k) One (1) column for a *preliminary* estimate of the Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event:
  - (i) *Multiplying* the plane of array insolation:
  - (ii) *Times* the appropriate initial energy yield curve as follows:
    1. For the first eleven (11) months of the first Term Year the appropriate initial energy yield curve must be the energy yield curve set forth in Item 2(d) of this Exhibit M;
    2. For the first eleven (11) months of any Term Year, other than the first Term Year, the appropriate initial energy yield curve

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must be the energy yield curve set forth in Item 2(e) of this Exhibit M for the previous Term Year;

- (l) One (1) column for a *final* estimate of the Metered Amounts that would have been produced by the Generating facility, but for the Lost Output Event calculated by:
  - (i) *Multiplying* the plane of array insolation;
  - (ii) *Times* the *final energy yield curve* from Item 2(e) of this Exhibit M for the Term Year being calculated;
- (m) One (1) column for the *preliminary* estimate of Lost Output calculated by:
  - (i) *Subtracting* the actual Metered Amount quantities set forth in Item 4(i) of this Exhibit M;
  - (ii) *From* the preliminary estimate of the Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event, calculated in Item 4(k); and
- (n) One (1) column for the *final* estimate of Lost Output calculated by:
  - (i) *Subtracting* the actual Metered Amount quantities set forth in Item 4(i) of this Exhibit M;
  - (ii) *From* the estimate of Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output Event, calculated in Item 4(l) of this Exhibit M; and
- (o) One (1) row for each Settlement Interval.

5. Generating Facility Performance Factor Calculation.

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

- (a) The first table must contain the monthly Metered Amount totals and must consist of:
  - (i) One (1) column for the month number;
  - (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for the monthly Metered Amount totals for each Term Year from the plane of array insolation data collection worksheet column set forth in Item 3(f) of this Exhibit M; and
  - (v) One (1) row for each month;

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- (b) The second table must contain the monthly totals of forecasted Metered Amount and must consist of:
    - (i) One (1) column for the month number;
    - (ii) One (1) column for the month name;
    - (iii) One (1) column for the year number;
    - (iv) One (1) column for the monthly totals of forecasted Metered Amount for each Term Year from the plane of array insolation data collection worksheet column set forth in Item 3(g) of this Exhibit M; and
    - (v) One (1) row for each month; and
  - (c) The third table must contain monthly Performance Factors and must consist of:
    - (i) One (1) column for the month number;
    - (ii) One (1) column for the month name;
    - (iii) One (1) column for the year number;
    - (iv) One (1) column for a monthly Generating Facility Performance Factor result and a Term Year Generating Facility Performance Factor results calculated by:
      - 1. *Dividing* the appropriate value in the first table;
      - 2. *By* the appropriate value in the second table;
    - (v) One (1) row for each month; and
    - (vi) One (1) row for the Term Year Generating Facility Performance Factor results.
6. Periodic Review of Lost Output Calculation.  
At least once per Term Year, SCE shall review the variation in the Lost Output preliminary and final results to determine if other variables, including temperature, precipitation, solar altitude or azimuth angles or other measured parameters per Exhibit T, should be incorporated into the Lost Output calculations.
7. Assignment of Lost Output Estimate to an Independent Consultant.  
The Parties can by mutual agreement elect to have the estimate of Lost Output prepared by an independent consultant.

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

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

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

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 1D

Rosemead, CA 91770

Ladies and Gentlemen:

\_\_\_\_\_ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of \_\_\_\_\_, a \_\_\_\_\_ corporation, also known as RAP ID# \_\_\_\_\_ (the "Applicant"), for the amount of XXX AND XX/100 dollars (\$\_\_\_\_\_) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on \_\_\_\_\_ (the "Expiration Date").

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

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

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

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

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

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, 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 and conditions of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

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

AUTHORIZED SIGNATURE for Issuer

\_\_\_\_\_

(Name)

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

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*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 \_\_\_\_\_ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { \_\_\_\_\_ }, dated \_\_\_\_\_, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ \_\_\_\_\_, for the following reason(s) [check applicable provision]:
  - ]A. An Event of Default, as defined in that certain Renewable Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the "Agreement"), with respect to the Applicant has occurred and is continuing.
  - ]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
  - ]C. The Letter of Credit will expire in fewer than twenty (20) Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has

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

- [ ]D. The Bank or Applicant has heretofore provided written notice to the Beneficiary of the Bank's or Applicant's intent not to renew the Letter of Credit following the present Expiration Date thereof, 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: (i) as a result of Applicant's failure to achieve Commercial Operation of the full Contract Capacity by the Commercial Operation Deadline or any extended Commercial Operation Deadline as provided in the Agreement; (ii) because Initial Synchronization has not occurred on or before the Initial Synchronization Deadline or for any of the reasons set forth in Section 3.06(d) of the Agreement; (iii) because Commercial Operation has not occurred on or before the Commercial Operation Deadline or for any of the reasons set forth in Section 3.06(d) of the Agreement; or (iii) because the Agreement has been terminated due to an Event of Default by Applicant before the Commercial Operation Deadline.
- [ ]G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of Sixty dollars (\$60) 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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*The contents of this document are subject to restrictions on disclosure as set forth herein.*

# Southern California Edison

*Confidential Information*

*RAP ID #5494, McCoy Solar, LLC*

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

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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**

Interconnection Assignment Agreement

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

**EXECUTION COPY**

**ASSIGNMENT AND ASSUMPTION  
OF  
RIGHTS TO INTERCONNECTION SERVICE UNDER  
LARGE GENERATOR INTERCONNECTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF RIGHTS TO INTERCONNECTION SERVICE UNDER THE LARGE GENERATOR INTERCONNECTION AGREEMENT (the "Assignment") is made and entered into as of August 12, 2011, by and between NextEra Desert Center Blythe, LLC, a Delaware limited liability company ("Assignor"), Genesis Solar, LLC, a Delaware limited liability company ("Genesis"), and McCoy Solar, LLC ("McCoy", and together with Genesis, the "Assignees" or each an "Assignee").

**WITNESSETH:**

WHEREAS, Assignor is a party to that certain Large Generator Interconnection Agreement (the "LGIA"), dated as of August 12, 2011, by and among Assignor, Southern California Edison Company ("SCE") and California Independent System Operator Corporation ("CAISO"), pursuant to which Assignor has the right to receive Interconnection Services (as defined in the LGIA) for one or more generating facilities with an aggregate capacity not to exceed 500 MW;

WHEREAS, Genesis is developing and intends to construct, own and operate a solar thermal generation facility with a nameplate capacity of 250MW;

WHEREAS, McCoy is developing and intends to construct, own and operate a photovoltaic generation facility with a nameplate capacity of 250MW;

WHEREAS, pursuant to Section 19.1 of the LGIA, Assignor has the right, without the prior consent of SCE and CAISO, to assign the LGIA to an Affiliate (as such term is defined in the LGIA), provided that such Affiliate have an equal or greater credit rating as Assignor and have the legal authority and operational ability to satisfy the obligations of Assignor under the LGIA;

WHEREAS, Genesis and McCoy are Affiliates of Assignor;

WHEREAS, Genesis and McCoy each has the same credit rating as Assignor and each has the legal authority and operational ability to satisfy the obligations of Assignor under the LGIA; and

WHEREAS, Assignor has agreed to assign to each Assignee the right under the LGIA to receive Interconnection Service (as defined in the LGIA) and any associated rights or attributes for up to 250MW of capacity (the "Assigned Rights") and each Assignee has agreed to accept assignment of the respective Assigned Rights in accordance with the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and each Assignee agree as follows:

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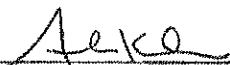
1. Assignor hereby does transfer, assign, and set over to each Assignee the Assigned Rights.
2. Assignee hereby assumes all obligations related to the Assigned Rights arising after the date hereof; provided, however, that in no event shall Assignor be relieved of its obligations as a party to the LGIA.
3. Assignee hereby covenants and agrees to take all such actions with respect to its Assigned Rights as may be required (or refrain from taking such action) to cause Assignor to meet its obligations and responsibilities under the LGIA.
4. Assignor hereby agrees to execute and deliver to Assignee such other documents, instruments or agreements as may be reasonably requested by Assignee to further effectuate the transfer and assignment of the Assigned Rights as herein provided.
5. Notwithstanding anything contained herein to the contrary, nothing contained in this Assignment shall relieve or be deemed to relieve Assignor from its obligations relating to the Assigned Rights prior to the date hereof.
6. This Assignment will be construed in accordance with, and be governed by, the laws of the State of New York.
7. This Assignment may be executed in counterparts, each of which will be deemed to be an original and all of which are one and the same assignment but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by facsimile transmission shall be effective delivery of a manually executed counterpart of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be duly executed as of the date first above written.

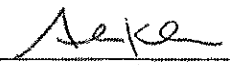
ASSIGNOR:

NEXTERA DESERT CENTER BLYTHE, LLC

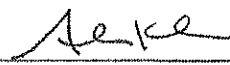
By:   
Name: Andrew Kushner  
Title: Assistant Treasurer

ASSIGNEES:

GENESIS SOLAR, LLC

By:   
Name: Andrew Kushner  
Title: Vice President and Assistant Treasurer

MCCOY SOLAR, LLC

By:   
Name: Andrew Kushner  
Title: Vice President and Assistant Treasurer

[Assignment and Assumption of Rights to Interconnection Service under Large Generator Interconnection Agreement]

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

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

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

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**EXHIBIT P**

*Shared Facilities Agreement*

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

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**EXECUTION COPY****SHARED FACILITIES AGREEMENT**

THIS SHARED FACILITIES AGREEMENT (this "Agreement"), is entered into as of August 12, 2011, by and between NextEra Desert Center Blythe, LLC, a Delaware limited liability company ("Desert Center"), Genesis Solar, LLC, a Delaware limited liability company ("Genesis"), and McCoy Solar, LLC, a Delaware limited liability company ("McCoy", and together with Desert Center and Genesis, the "Parties" and each a "Party").

**RECITALS**

WHEREAS, Genesis is developing and intends to construct, own and operate a solar thermal generation facility with a nameplate capacity of 250 MW (net) (the "Genesis Project");

WHEREAS, McCoy is developing and intends to construct, own and operate a photovoltaic generation facility with a nameplate capacity of 250 MW (net) (the "McCoy Project", together with the Genesis Project, the "Projects" and each a "Project");

WHEREAS, Desert Center is a party to that certain Large Generator Interconnection Agreement by and among Desert Center, Southern California Edison Company ("SCE") and California Independent System Operator Corporation ("CAISO"), dated as of August 12, 2011 (the "LGIA") pursuant to which Desert Center has the right to receive Interconnection Services (as defined in the LGIA) for one or more generating facilities with an aggregate capacity not to exceed 500 MW;

WHEREAS, each of Genesis and McCoy owns a fifty percent (50%) membership interest in Desert Center;

WHEREAS, Desert Center owns or will own certain personal property, fixtures, equipment and/or facilities described in Exhibit A attached hereto (the "Shared Facilities") that are necessary for the interconnection of each Project to the electric transmission system of SCE; and

WHEREAS, pursuant to the terms of an Assignment and Assumption of Rights to Interconnection Service under Large Generator Interconnection Agreement, dated as of August 12, 2011, among Desert Center, Genesis and McCoy (the "Assignment Agreement"), a copy of which is attached hereto as Exhibit B, Desert Center has assigned its rights to receive Interconnection Service (as defined in the LGIA) and all associated rights, in equal proportions, to each of Genesis and McCoy with respect to the electric generation facilities to be owned and operated by each of them and each of Genesis and McCoy has agreed to assume certain obligations of Desert Center thereunder in respect thereof;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

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

AGREEMENT

1. **TERM; EARLY TERMINATION**

1.1 **Term:** The term of this Agreement shall commence on the date first written above and shall continue in effect until terminated (a) by mutual agreement of the Parties, (b) pursuant to Section 1.2 of this Agreement, or (c) pursuant to Section 7.1 of this Agreement.

1.2 **Early Termination:** This Agreement shall automatically terminate, without further action by either Party and without further liability of any Party to any other Party, upon the date that all Parties, or their successors and assigns, shall have permanently ceased operation of the Projects for the production of electric energy.

2. **GRANT OF SHARED FACILITIES RIGHTS**

2.1 **Grant:** Desert Center hereby grants to Genesis and McCoy, respectively, during the term of this Agreement, and on the terms and subject to the conditions hereof, the non-exclusive right to access and utilize the Shared Facilities as may be reasonably necessary in connection with the ownership, operation and maintenance of the Genesis Project and the McCoy Project, respectively.

2.2 **Essential Nature:** Desert Center hereby acknowledges that the right of Genesis and McCoy to access and utilize the Shared Facilities are essential to the production of electric energy by the Genesis Project and the McCoy Project, respectively, and to the delivery of such energy to the electric transmission system of SCE.

2.3 **Vesting:** The right to access and utilize the Shared Facilities granted hereunder by Desert Center to Genesis and McCoy, respectively, shall vest in each of Genesis and McCoy, respectively, as a contracting party hereunder without any transfer of title, leasehold or other interest or rights in the Shared Facilities.

3. **NATURE OF SHARED FACILITIES RIGHTS**

3.1 **Limitation on Grant:** Subject to Section 3.3 hereof, the grant of rights under this Agreement by Desert Center to Genesis and McCoy is made only to the extent that such rights do not limit in any material respect the ability of Desert Center to comply with the terms and conditions of the LGIA. For the avoidance of doubt, the grant of rights under this Agreement by Desert Center to Genesis and McCoy shall not relieve Desert Center of its obligations under the LGIA.

3.2 **Assignment or Transfer of Rights:** Except as set forth in Section 9.7 hereof, Genesis and McCoy, respectively, shall not assign or transfer any rights granted to such Party hereunder with regard to the Shared Facilities, or grant any permission, license, right of way or similar right with regard to the Shared Facilities, without the prior written consent of Desert Center.



3.3 **Interference:** Subject to the terms of this Agreement, in no event shall any Party be entitled to exercise its rights to access and utilize the Shared Facilities if the exercise of such rights would materially interfere with or limit the reasonable and necessary access and utilization of the Shared Facilities by any other Party.

3.4 **Prior Written Consent:** Except as set forth in this Agreement and the Amended and Restated Limited Liability Company Agreement of NextEra Desert Center Blythe, LLC, dated as of August 12, 2011, Desert Center shall not take any action that results in the forbearance, foreclosure, termination or alteration of the respective rights or increases the obligations or responsibilities of Genesis or McCoy of access to, utilization of or reliance upon the Shared Facilities without the prior written consent of Genesis or McCoy, respectively.

4. **MAINTENANCE OF SHARED FACILITIES**

4.1 **Allocation of Certain Costs and Expenses:**

(i) Desert Center shall be responsible for the ownership or possession, operation, inspection, maintenance, repair, alteration, relocation, improvement and replacement of the Shared Facilities; provided, however, that the Parties hereby agree that the costs and expenses of the operation, inspection, maintenance, repair, alteration, relocation, improvement and replacement of the Shared Facilities and of insuring the Shared Facilities shall be shared equally between Genesis and McCoy. Each of Genesis and McCoy shall pay its respective allocation (specified above) of such costs and expenses to Desert Center within ten (10) days of receipt from Desert Center of each written notice specifying such costs and expenses.

(ii) Genesis and McCoy shall each be liable to pay for the retail station power service of its respective Project.

4.2 **Successor Agreement:** In the event that the Shared Facilities are no longer operated and maintained by a single entity for any reason, the Parties agree to use good faith efforts to negotiate mutually agreeable terms and execute a mutually agreeable agreement (or amendment to this Agreement) that specifies the division of responsibilities of the entities providing operation and maintenance services associated with the Shared Facilities.

5. **CHANGE IN LAW**

5.1 **Change in Law:** In the event that a change in the laws or regulations applicable to the Shared Facilities, any of the Projects, or this Agreement requires the amendment, modification or replacement of this Agreement in order to satisfy any applicable federal, state or local regulatory requirements, the Parties agree to use good faith efforts to negotiate and implement mutually agreeable terms to accomplish such amendment, modification or replacement.

6. **CERTAIN COVENANTS**

- 6.1 **Authority and Operational Abilities.** Each of the Parties represents, as of the Effective Date, and covenants for the term of this Agreement, that such Party has the legal authority and operational abilities to fulfill its obligations under this Agreement.
- 6.2 **Payment of Certain Studies, Upgrades and Facilities:** In the event that any Project at any time shall pay, fund or post as security pursuant to the LGIA any amounts, facilities, upgrades, or studies to the extent arising as a result of the interconnection of any other Project, the Project in connection with whose interconnection such costs arose shall promptly pay and reimburse on demand all such costs to the Project that shall have initially paid, funded or posted the same as security.
- 6.3 **Observance of LGIA:** Each Party shall exercise its rights and perform its obligations under the LGIA which have been assigned to it in a manner that is reasonable and not discriminatory against the other Parties. Without limiting the generality of the foregoing, during the term of this Agreement, each Party agrees to:
- (i) Operate its respective Project in accordance with Good Utility Practice, Applicable Laws and Regulations and Applicable Reliability Standards, in each case as defined in the LGIA, and in a manner consistent with the terms of the LGIA.
  - (ii) Observe and facilitate Desert Center's compliance with all provisions of the LGIA to which Desert Center is subject (and all insurance requirements, operational limits, operating guides, operating procedures and reliability standards and requirements applicable by virtue thereof) as it relates to its respective Project;
  - (iii) Assume and be bound by all obligations related to its respective rights to receive Interconnection Service, as set forth in the Assignment Agreement.
  - (iv) Not take any action (or refrain from taking any action) which would result in a breach of the LGIA or the Assignment to which such Party is a party;
  - (v) Use all commercially reasonable efforts to promptly resolve any technical issues arising in connection with the operation of its respective Project that might reasonably be expected to result in a default under the LGIA, and if such default occurs, to promptly cure such default in accordance with the terms of the LGIA;
  - (vi) Comply with all instructions, as may be communicated to Genesis and McCoy by Desert Center, in order to ensure compliance with the provisions of the LGIA with respect to its respective Project; and

- (vii) Provide each other Party with all reasonable information regarding the operation and condition of its respective Project required for each other Party to maintain compliance with the terms and conditions of the LGIA.
- (viii) Provide to each other Party copies of all notices and instructions received by any Party under the LGIA or the Assignment Agreement.

6.4 Adverse Events.

- (i) If an operational issue arises at one of the Projects that is reasonably expected to result in a material breach by Desert Center of the LGIA or this Agreement (an "Adverse Event"), Desert Center shall, upon instruction by either of Genesis or McCoy (in such capacity, each an "Instructing Party"), curtail the Project that is causing the Adverse Event. In the event of such curtailment, the Project that has caused the Adverse Event shall not be permitted to deliver energy to the Shared Facilities until such time as the Adverse Event has been cured to the reasonable satisfaction of the Instructing Party.
- (ii) If, as a direct result of an Adverse Event, Desert Center incurs costs, expenses, or penalties of any kind, the Project that has caused such Adverse Event shall be solely responsible for reimbursing Desert Center for any such costs, expenses or penalties. In the event that both Projects are responsible for the Adverse Event, and to the extent that Desert Center, in its sole and absolute discretion, can accurately allocate responsibility for such Adverse Event between the Projects, each Project shall be responsible for its allocable portion of the applicable costs, expenses or penalties. If, however, it is not reasonably possible for Desert Center, as determined in its sole and absolute discretion, to accurately allocate such responsibility, the Projects will be liable to an equal extent for such costs, expenses or penalties.

6.5 Priority of Curtailment: Notwithstanding anything to the contrary in this Agreement, in the event of curtailment pursuant to the LGIA (or pursuant to applicable operating guides or applicable reliability standards and requirements), the Parties agree that they shall cause the Projects to be curtailed as follows:

- (i) first, and if necessary in full, any Project (if any) the operation of which is contributing to an SCE system emergency; and
- (ii) thereafter, both Projects, at the same time and to an extent for each Project equal to such Project's pro rata portion (based on such Project's nameplate capacity) of the energy delivered to the Shared Facilities as of the time immediately prior to the event giving rise to the curtailment.

6.6 Agreement to Cooperate. Each Party agrees to reasonably cooperate with the other Parties so that, subject to the terms of this Agreement, each Project benefits

from the full utilization and enjoyment of the Shared Facilities as is necessary for the efficient operation of each such Project.

- 6.7 **No Liens.** Each Party agrees not to grant any mortgages, liens, pledges, charges or security interests (collectively, "Liens") on the Shared Facilities and to keep the Shared Facilities free and clear of all Liens other than:
- (i) Liens for taxes which are either not yet delinquent or are subject to a good faith contest in which adequate reserves are established in accordance with GAAP with respect to the contested item (if and to the extent GAAP requires the establishment of such reserves);
  - (ii) defects, restrictions, irregularities, encumbrances (other than for borrowed money) and clouds on title and statutory liens that not materially impair the value or use of the Shared Facilities for the Projects;
  - (iii) pledges to secure statutory obligations relating to worker's compensation and/or unemployment insurance or other social security legislation;
  - (iv) carriers', warehousemen's, mechanics', workmen's, materialmen's, suppliers', construction or other similar Liens arising in the ordinary course of business of the Parties or incident to the construction, operation, repair, restoration or improvement of the Shared Facilities for obligations (A) which are not yet due or (B) which are the subject of a good faith contest in which adequate reserves are established in accordance with GAAP (if and to the extent GAAP requires the establishment of such reserves); and
  - (v) Liens arising out of judgments or awards in an amount less than \$1,000,000 so long as (i) enforcement of any such Lien has been stayed and an appeal or proceeding for review is being prosecuted in good faith, and (ii) adequate reserves have been established in connection therewith in accordance with GAAP (if and to the extent GAAP requires the establishment of such reserves).

## 7. MATERIAL BREACH

- 7.1 **Material Breach by any Party.** In the event of any material breach of this Agreement by any Party and such Party's failure to cure such breach within a reasonable time not to exceed thirty (30) days after receipt of written notice from any other Party describing such breach, such Party shall have the right, but not the obligation, in addition to all remedies available to it at law or in equity, to (i) cure the breach on behalf of the breaching Party, (ii) suspend the breaching Party's access to all or any portion of the Shared Facilities owned by such non-breaching Party for so long as such default shall be continuing and remain uncured, or (iii) terminate this Agreement; provided, however, that in the event of any breach by a Party of this Agreement that may give rise to a breach by any other Party pursuant to the terms LGIA, such Party shall not be required to provide the breaching Party

hereunder with notice and/or an opportunity to cure in order to exercise the remedy specified in clause (i) or (ii) of this sentence only; and provided, further, that the remedy specified in clause (i) may be exercised, without prejudice to any right or remedy of any Party hereunder, by any lender of such Party. If a Party (or any lender thereof) chooses to cure a breaching Party's default, the breaching Party shall reimburse such Party (or such Party's lender) upon demand for all commercially reasonable costs incurred by such Party (or such Party's lender) in curing such breach.

## 8. FORCE MAJEURE

8.1 **Force Majeure.** In the event of an act of God, government order or restraint, war (declared or undeclared) or warlike conditions, act of terrorism, blockade, revolution, strike, lockout, civil commotion, fire, flood, storm, epidemic or any other occurrence beyond a Party's reasonable control (each a "Force Majeure Event"), such Party shall promptly notify each other Party thereof and, so long as such condition shall persist, such Party shall not be liable for the delay in performance of, or the failure to perform, its obligations (other than obligations for payment of amounts due hereunder) under this Agreement caused directly or indirectly thereby. The claiming Party shall give each other Party notice describing the particulars of the Force Majeure Event. Within fifteen (15) days after giving notice of the Force Majeure Event, the claiming Party shall give each other Party an estimate of the Force Majeure Event's expected duration and probable impact. The claiming Party shall continue to furnish each other Party with timely regular reports during the continuation of the Force Majeure Event. Each Party shall immediately exercise commercially reasonable efforts to mitigate or limit the impact to its obligations hereunder as a result of the Force Majeure Event.

## 9. MISCELLANEOUS

- 9.1 **Relationship of Parties.** The Parties do not intend to create hereby any joint venture, partnership, association or any other entity for the conduct of any business. Nothing herein shall be deemed to authorize any Party to act on behalf of any other Party.
- 9.2 **Third-Party Beneficiaries.** Each of the Parties hereto hereby grants to SCE and CAISO, as parties to the LGIA, the right, as third-party beneficiaries of this Agreement, to enforce the Parties' obligations under Sections 6.2 and 6.3 hereunder, and acknowledges and agrees that Sections 6.2 and 6.3 are expressly for benefit of SCE, CAISO and the Parties.
- 9.3 **Non-Interference.** Subject to Section 3.3, each Party agrees not to interfere with the reasonable and necessary utilization of the Shared Facilities by any other Party as permitted hereunder.

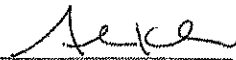
- 9.4 **Modification and Amendment.** The terms of this Agreement may only be modified or amended in a writing signed by all of the Parties, with the written consent of SCE and CAISO, which consent shall not be unreasonably withheld.
- 9.5 **Waiver.** The failure of a Party to insist upon or enforce strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions, rights, and remedies in that or any other instance; rather, the same shall be and remain in full force and effect.
- 9.6 **Enforceability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition, but shall be effective to the extent of such remaining provisions hereof.
- 9.7 **Assignment.** No Party may assign any of its benefits, rights or obligations hereunder to any third party without the prior written consent of each other Party, provided, however, that any Party may collaterally assign this Agreement to any entity, or such entity's agent, in connection with a financing or a refinancing of its respective Project.
- 9.8 **Indemnification.** Each Party shall indemnify, defend and hold each other Party, its officers, directors, shareholders, members and affiliates, harmless from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the indemnifying Party's performance or non-performance of its obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing, by the indemnified party. However, in no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to any other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.
- 9.9 **Governing Law.** This Agreement shall be governed by and constructed in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.
- 9.10 **Inspection of Records.** Each Party shall have access to any records concerning the Shared Facilities held by any other Party upon reasonable notice and at reasonable times.

- 9.11 **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof.
- 9.12 **Section Headings.** The section headings in this Agreement are for convenience of reference only and shall not modify, define, expand, or limit any of the terms or provisions hereof.
- 9.13 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.
- 9.14 **Specific Performance.** The Parties hereto may demand specific performance of this Agreement. Each Party hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance.


[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Shared Facilities Agreement to be executed as of the date first written above.

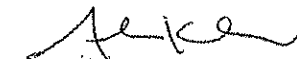
NEXTERA DESERT CENTER BLYTHE, LLC

By:   
Name: Andrew Kushner  
Title: Assistant Treasurer

GENESIS SOLAR, LLC

By:   
Name: Andrew Kushner  
Title: Vice President and Assistant Treasurer

MCCOY SOLAR, LLC

By:   
Name: Andrew Kushner  
Title: Vice President and Assistant Treasurer

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



**EXHIBIT A**  
**TO**  
**SHARED FACILITIES AGREEMENT**

**Shared Facilities**

The "Shared Facilities" shall consist of the following components of the "Interconnection Customer Interconnection Facilities" (as defined in the LGIA), each of which will be located adjacent to SCE's Colorado River Substation on real property subject to the United States Department of Interior - Bureau of Land Management Right-of-Way/Leave/Grant Serial Number CACA-048880 granted to Genesis (as may be amended):

1. the new Genesis McCoy 220 kV Switchyard;
2. the Colorado River-Genesis McCoy 220kV Transmission Line; and
3. the new all dielectric self supported ("ADSS") fiber optic cable from the Colorado River Substation to the Genesis McCoy 220 kV Switchyard, and associated underground vaults, risers, conduits, panels and cable to terminate the ADSS, to provide the second of two diverse telecommunications paths required for the system protection systems.

All other Interconnection Customer Interconnection Facilities shall not constitute "Shared Facilities" for purposes of this Agreement.

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

**EXHIBIT B**  
**TO**  
**SHARED FACILITIES AGREEMENT**

**Assignment Agreement**

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

**EXECUTION COPY**

**ASSIGNMENT AND ASSUMPTION  
OF  
RIGHTS TO INTERCONNECTION SERVICE UNDER  
LARGE GENERATOR INTERCONNECTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF RIGHTS TO INTERCONNECTION SERVICE UNDER THE LARGE GENERATOR INTERCONNECTION AGREEMENT (the "Assignment") is made and entered into as of August 12, 2011, by and between NextEra Desert Center Blythe, LLC, a Delaware limited liability company ("Assignor"), Genesis Solar, LLC, a Delaware limited liability company ("Genesis"), and McCoy Solar, LLC ("McCoy", and together with Genesis, the "Assignees" or each an "Assignee").

**WITNESSETH:**

WHEREAS, Assignor is a party to that certain Large Generator Interconnection Agreement (the "LGIA"), dated as of August 12, 2011, by and among Assignor, Southern California Edison Company ("SCE") and California Independent System Operator Corporation ("CAISO"), pursuant to which Assignor has the right to receive Interconnection Services (as defined in the LGIA) for one or more generating facilities with an aggregate capacity not to exceed 500 MW;

WHEREAS, Genesis is developing and intends to construct, own and operate a solar thermal generation facility with a nameplate capacity of 250MW;

WHEREAS, McCoy is developing and intends to construct, own and operate a photovoltaic generation facility with a nameplate capacity of 250MW;

WHEREAS, pursuant to Section 19.1 of the LGIA, Assignor has the right, without the prior consent of SCE and CAISO, to assign the LGIA to an Affiliate (as such term is defined in the LGIA), provided that such Affiliate have an equal or greater credit rating as Assignor and have the legal authority and operational ability to satisfy the obligations of Assignor under the LGIA;

WHEREAS, Genesis and McCoy are Affiliates of Assignor;

WHEREAS, Genesis and McCoy each has the same credit rating as Assignor and each has the legal authority and operational ability to satisfy the obligations of Assignor under the LGIA; and

WHEREAS, Assignor has agreed to assign to each Assignee the right under the LGIA to receive Interconnection Service (as defined in the LGIA) and any associated rights or attributes for up to 250MW of capacity (the "Assigned Rights") and each Assignee has agreed to accept assignment of the respective Assigned Rights in accordance with the terms and subject to the conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and each Assignee agree as follows:

NBA - 034139/000019 - 300626 v2

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1. Assignor hereby does transfer, assign, and set over to each Assignee the Assigned Rights.
2. Assignee hereby assumes all obligations related to the Assigned Rights arising after the date hereof; provided, however, that in no event shall Assignor be relieved of its obligations as a party to the LGIA.
3. Assignee hereby covenants and agrees to take all such actions with respect to its Assigned Rights as may be required (or refrain from taking such action) to cause Assignor to meet its obligations and responsibilities under the LGIA.
4. Assignor hereby agrees to execute and deliver to Assignee such other documents, instruments or agreements as may be reasonably requested by Assignee to further effectuate the transfer and assignment of the Assigned Rights as herein provided.
5. Notwithstanding anything contained herein to the contrary, nothing contained in this Assignment shall relieve or be deemed to relieve Assignor from its obligations relating to the Assigned Rights prior to the date hereof.
6. This Assignment will be construed in accordance with, and be governed by, the laws of the State of New York.
7. This Assignment may be executed in counterparts, each of which will be deemed to be an original and all of which are one and the same assignment but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by facsimile transmission shall be effective delivery of a manually executed counterpart of this Assignment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be duly executed as of the date first above written.

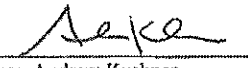
ASSIGNOR:

NEXTERA DESERT CENTER BLYTHE, LLC

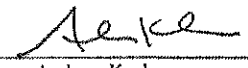
By:   
Name: Andrew Kushner  
Title: Assistant Treasurer

ASSIGNEES:

GENESIS SOLAR, LLC

By:   
Name: Andrew Kushner  
Title: Vice President and Assistant Treasurer

MCCOY SOLAR, LLC

By:   
Name: Andrew Kushner  
Title: Vice President and Assistant Treasurer

[Assignment and Assumption of Rights to Interconnection Service under Large Generator Interconnection Agreement]

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

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

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

## EXHIBIT Q

### *SCE Penalties and CAISO Sanctions*

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

1. Determining Seller's Liability for SCE Penalties.

If in any hour of any month in the Delivery Term Seller fails to comply with its Forecasting requirements under Exhibit D of this Agreement with respect to Seller's Forecast of available capacity only, and the sum of Energy Deviations for each of the six Settlement Intervals in that hour exceed the Performance Tolerance Band described in Paragraph 2 of this Exhibit, then Seller is liable for an SCE Penalty equal to one hundred fifty percent (150%) of the applicable price for the Product, as set forth in Section 1.07 and Exhibit E, for each MWh of electric energy deviation, or any portion thereof, in that hour.

2. Performance Tolerance Band.

The "Performance Tolerance Band," in kWh, is equal to:

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

3. Seller's Liability for CAISO Sanctions.

Seller must reimburse SCE for all CAISO Sanctions incurred by SCE as a result of Seller's failure to adhere to its obligations under the CAISO Tariff or any CAISO directive, as such directive may be communicated to Seller by SCE, or as set forth in Sections 3.14 and 4.01(c).

4. Billing and Documentation of CAISO Sanctions.

- (a) The CAISO Sanctions will be available for billing approximately one hundred twenty (120) days following the last day of the calendar month in which the event giving rise to the sanction occurs, or thirty (30) days after the CAISO final settlement data is available to SCE, whichever is sooner.
- (b) SCE shall provide to Seller the applicable back-up data used for validating CAISO Sanctions.

---

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

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

**EXHIBIT R**  
*Interconnection Agreement*

[See attached.]

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



Southern California Edison Company  
Tariff Title: Transmission Owner Tariff  
Tariff Record Title: Service Agreement No. XX

---

FERC FPA Electric Tariff

**LARGE GENERATOR INTERCONNECTION AGREEMENT (LGIA)  
AMONG**

**NEXTERA DESERT CENTER BLYTHE, LLC**

**AND**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**AND**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

(Genesis McCoy Solar Project – CAISO Queue Position#193)

---

Contract Effective Date: xx/xx/xx  
906.XX.X  
TOT223

Tariff Record Proposed Effective Date: xx/xx/xx  
Version Number: 0.0.0  
Option Code: A

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**LARGE GENERATOR INTERCONNECTION AGREEMENT**

**NEXTERA DESERT CENTER BLYTHE, LLC**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

**THIS LARGE GENERATOR INTERCONNECTION AGREEMENT ("LGIA")** is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and among **NextEra Desert Center Blythe, LLC**, a limited liability company organized and existing under the laws of the State/Commonwealth of Delaware ("Interconnection Customer" with a Large Generating Facility), **Southern California Edison Company**, a corporation organized and existing under the laws of the State of California ("Participating TO"), and **California Independent System Operator Corporation**, a California nonprofit public benefit corporation organized and existing under the laws of the State of California ("CAISO"). Interconnection Customer, Participating TO, and CAISO each may be referred to as a "Party" or collectively as the "Parties."

**RECITALS**

**WHEREAS**, CAISO exercises Operational Control over the CAISO Controlled Grid; and

**WHEREAS**, the Participating TO owns, operates, and maintains the Participating TO's Transmission System; and

**WHEREAS**, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this LGIA; and

**WHEREAS**, Interconnection Customer, Participating TO, and CAISO have agreed to enter into this LGIA for the purpose of interconnecting the Large Generating Facility with the Participating TO's Transmission System;

**NOW, THEREFORE**, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this LGIA, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used.

## ARTICLE 1. DEFINITIONS

**Abandoned Plant Approval** shall mean a FERC final order, not subject to rehearing or appeal, unconditionally granting the Participating TO's request for a declaratory order that the Participating TO can recover 100% of its prudently incurred costs for the Network Upgrades if such facilities are abandoned due to circumstances outside of the Participating TO's control.

**Adverse System Impact** shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

**Affected System** shall mean an electric system other than the CAISO Controlled Grid that may be affected by the proposed interconnection, including the Participating TO's electric system that is not part of the CAISO Controlled Grid.

**Affiliate** shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

**Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

**Applicable Reliability Council** shall mean the Western Electricity Coordinating Council or its successor.

**Applicable Reliability Standards** shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Balancing Authority Area of the Participating TO's Transmission System to which the Generating Facility is directly connected, including requirements adopted pursuant to Section 215 of the Federal Power Act.

**Asynchronous Generating Facility** shall mean an induction, doubly-fed, or electronic power generating unit(s) that produces 60 Hz (nominal) alternating current.

**Balancing Authority** shall mean the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real time.

**Balancing Authority Area** shall mean the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

**Base Case** shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies.

**Breach** shall mean the failure of a Party to perform or observe any material term or condition of this LGIA.

**Breaching Party** shall mean a Party that is in Breach of this LGIA.

**Business Day** shall mean Monday through Friday, excluding federal holidays and the day after Thanksgiving Day.

**CAISO Controlled Grid** shall mean the system of transmission lines and associated facilities of the parties to the Transmission Control Agreement that have been placed under the CAISO's Operational Control.

**CAISO Tariff** shall mean the CAISO's tariff, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

**Calendar Day** shall mean any day including Saturday, Sunday or a federal holiday.

**Commercial Operation** shall mean the status of an Electric Generating Unit or project phase at a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.

**Commercial Operation Date** of an Electric Generating Unit or project phase shall mean the date on which the Electric Generating Unit or project phase at the Generating Facility commences Commercial Operation as agreed to by the applicable Participating TO, the CAISO, and the Interconnection Customer pursuant to Appendix E to this LGIA, and in accordance with the implementation plan agreed to by the Participating TO and the CAISO for multiple individual Electric Generating Units or project phases at a Generating Facility where an Interconnection Customer intends to establish separate Commercial Operation Dates for those Electric Generating Units or project phases.

**Confidential Information** shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, subject to Article 22.1.2.

**Default** shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of this LGIA.

**Distribution System** shall mean those non-CAISO-controlled transmission and distribution facilities owned by the Participating TO.

**Distribution Upgrades** shall mean the additions, modifications, and upgrades to the Participating TO's Distribution System. Distribution Upgrades do not include Interconnection Facilities.

**Effective Date** shall mean the date on which this LGIA becomes effective upon execution by all Parties subject to acceptance by FERC, or if filed unexecuted, upon the date specified by FERC.

**Electric Generating Unit** shall mean an individual electric generator and its associated plant and apparatus whose electrical output is capable of being separately identified and metered.

**Emergency Condition** shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the CAISO, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the CAISO Controlled Grid or the electric systems of others to which the CAISO Controlled Grid is directly connected; (3) that, in the case of the Participating TO, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Participating TO's Transmission System, Participating TO's Interconnection Facilities, Distribution System, or the electric systems of others to which the Participating TO's electric system is directly connected; or (4) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

**Environmental Law** shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

**Federal Power Act** shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq.

**FERC** shall mean the Federal Energy Regulatory Commission or its successor.

**Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

**Generating Facility** shall mean the Interconnection Customer's Electric Generating Unit(s) used for the production of electricity identified in the Interconnection Customer's Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

**Generating Facility Capacity** shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

**Generator Interconnection Procedures (GIP)** shall mean the CAISO protocol that sets forth the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility or Small Generating Facility that is included in CAISO Tariff Appendix Y.

**Generator Interconnection Study Process Agreement** shall mean the agreement between the Interconnection Customer and the CAISO for the conduct of the Interconnection Studies.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**Governmental Authority** shall mean any federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, CAISO, Participating TO, or any Affiliate thereof.

**Governing Independent Study Process Interconnection Studies** shall mean the engineering study(ies) conducted or caused to be performed by the CAISO, in coordination with the applicable Participating TO(s), that evaluates the impact of the proposed interconnection on the safety and reliability of the Participating TO's Transmission System and, if applicable, an Affected System, which shall consist primarily of a Facilities Study as described in Section 4.5 of the Generation Interconnection Procedures or a System Impact Study as described in Section 4.4 of the Generation Interconnection Procedures.

**Hazardous Substances** shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

**Initial Synchronization Date** shall mean the date upon which an Electric Generating Unit is initially synchronized and upon which Trial Operation begins.

**In-Service Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Participating TO's Interconnection Facilities to obtain back feed power.

**Interconnection Customer's Interconnection Facilities** shall mean all facilities and equipment, as identified in Appendix A of this LGIA, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Participating TO's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

**Interconnection Facilities** shall mean the Participating TO's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Participating TO's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

**Interconnection Financial Security** shall mean any of the financial instruments listed in Section 9.1 of the GIP that are posted by an Interconnection Customer.

**Interconnection Handbook** shall mean a handbook, developed by the Participating TO and posted on the Participating TO's web site or otherwise made available by the Participating TO, describing technical and operational requirements for wholesale generators and loads connected to the Participating TO's portion of the CAISO Controlled Grid, as such handbook may be modified or superseded from time to time. Participating TO's standards contained in the Interconnection Handbook shall be deemed consistent with Good Utility Practice and Applicable Reliability Standards. In the event of a conflict between the terms of this LGIA and the terms of the Participating TO's Interconnection Handbook, the terms in this LGIA shall apply.

**Interconnection Request** shall mean a request, in the form of Appendix 1 to the Generator Interconnection Procedures, in accordance with the CAISO Tariff.

**Interconnection Service** shall mean the service provided by the Participating TO and CAISO associated with interconnecting the Interconnection Customer's Generating Facility to the Participating TO's Transmission System and enabling the CAISO Controlled Grid to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of this LGIA, the Participating TO's Transmission Owner Tariff, and the CAISO Tariff.

**Interconnection Study** shall mean

- (i) For Interconnection Requests processed under the cluster study process described in the Generator Interconnection Procedures, either of the following studies: the Phase I Interconnection Study or the Phase II Interconnection Study conducted or caused to be performed by the CAISO, in coordination with the applicable Participating TO(s), pursuant to the Generator Interconnection Procedures;
- (ii) For Interconnection Requests processed under the Independent Study Process described in the Generator Interconnection Procedures, the governing study(ies) conducted or caused to be performed by the CAISO, in coordination with the applicable Participating TO(s), pursuant to the Generator Interconnection Procedures, which shall consist primarily of a Facilities Study as described in Section 4.5 of the GIP or a System Impact Study as described in Section 4.4 of the GIP.

**IRS** shall mean the Internal Revenue Service.

**Large Generating Facility** shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

**Loss** shall mean any and all damages, losses, and claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties.

**Material Modification** shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request or any other valid interconnection request with a later queue priority date.

**Metering Equipment** shall mean all metering equipment installed or to be installed for measuring the output of the Generating Facility pursuant to this LGIA at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

**NERC** shall mean the North American Electric Reliability Corporation or its successor organization.

**Network Upgrades** shall be Participating TO's Delivery Network Upgrades and Participating TO's Reliability Network Upgrades.

**Operational Control** shall mean the rights of the CAISO under the Transmission Control Agreement and the CAISO Tariff to direct the parties to the Transmission Control Agreement how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting applicable reliability criteria.

**Partial Termination** shall refer to termination of this LGIA as described in Article 2.4.4 where i) this LGIA shall be terminated under Article 2.4.4 only with respect to one or more Electric Generating Units of a Phased Generating Facility; ii) this LGIA shall continue to remain in force and effect with respect to the first Electric Generating Unit to be placed into service and any subsequent Electric Generating Units of the Phased Generating Facility that are not the subject of the Partial Termination, and iii) no disconnection shall occur with respect to the sequence or Electric Generating Units within the Phased Generating Facility that are not terminated.

**Partial Termination Charge** shall mean that sum paid by the Interconnection Customer upon Partial Termination as provided for in Article 2.4.4.

**Partial Termination Charge Security** shall mean a form of security, issued in favor of the CAISO, naming the CAISO as the beneficiary for an amount equal to the maximum Partial Termination Charge that may become payable upon Partial Termination as provided for in Article 2.4.4. The Partial Termination Charge Security shall be in a form determined to be acceptable by the CAISO, of the type listed in CAISO GIP (CAISO Tariff Appendix Y) Section 9.1 (a) – (f), but which security shall be held in favor of the CAISO. Partial Termination Charge Security is separate and distinct from the Interconnection Financial Security.

**Participating TO's Delivery Network Upgrades** shall mean the additions, modifications, and upgrades to the Participating TO's Transmission System at or beyond the Point of Interconnection, other than Reliability Network Upgrades, identified in the Interconnection Studies, as identified in Appendix A, to relieve constraints on the CAISO Controlled Grid.

**Participating TO's Interconnection Facilities** shall mean all facilities and equipment owned, controlled or operated by the Participating TO from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to this LGIA, including any modifications, additions or upgrades to such facilities and equipment. Participating TO's Interconnection Facilities are sole use facilities and shall



not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

**Participating TO's Reliability Network Upgrades** shall mean the additions, modifications, and upgrades to the Participating TO's Transmission System at or beyond the Point of Interconnection, identified in the Interconnection Studies, as identified in Appendix A, necessary to interconnect the Large Generating Facility safely and reliably to the Participating TO's Transmission System, which would not have been necessary but for the interconnection of the Large Generating Facility, including additions, modifications, and upgrades necessary to remedy short circuit or stability problems resulting from the interconnection of the Large Generating Facility to the Participating TO's Transmission System. Participating TO's Reliability Network Upgrades also include, consistent with Applicable Reliability Standards and Applicable Reliability Council practice, the Participating TO's facilities necessary to mitigate any adverse impact the Large Generating Facility's interconnection may have on a path's Applicable Reliability Council rating. Participating TO's Reliability Network Upgrades do not include any Participating TO's Delivery Network Upgrades.

**Participating TO's Transmission System** shall mean the facilities owned and operated by the Participating TO and that have been placed under the CAISO's Operational Control, which facilities form part of the CAISO Controlled Grid.

**Party or Parties** shall mean the Participating TO, CAISO, Interconnection Customer or the applicable combination of the above.

**Phase I Interconnection Study** shall mean the engineering study conducted or caused to be performed by the CAISO, in coordination with the applicable Participating TO(s), that evaluates the impact of the proposed interconnection on the safety and reliability of the Participating TO's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility(ies) were interconnected without identified project modifications or system modifications, as provided in the On-Peak Deliverability Assessment (as defined in the CAISO Tariff), and other potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Large Generator Interconnection Procedures. The study will also identify the approximate total costs, based on per unit costs, of mitigating these impacts, along with an equitable allocation of those costs to Interconnection Customers for their individual Generating Facilities.

**Phase II Interconnection Study** shall mean an engineering and operational study conducted or caused to be performed by the CAISO once per calendar year, in coordination with the applicable Participating TO(s), to determine the Point of Interconnection and a list of facilities (including the Participating TO's Interconnection Facilities, Network Upgrades, Distribution Upgrades, and Stand Alone Network Upgrades), the cost of those facilities, and the time required to interconnect the Generating Facility(ies) with the Participating TO's Transmission System.

**Phased Generating Facility** shall mean a Generating Facility that is structured to be completed and to achieve Commercial Operation in two or more successive sequences that are specified in this LGIA, such that each sequence comprises a portion of the total megawatt generation capacity of the entire Generating Facility.

**Point of Change of Ownership** shall mean the point, as set forth in Appendix A to this LGIA, where the Interconnection Customer's Interconnection Facilities connect to the Participating TO's Interconnection Facilities.

**Point of Interconnection** shall mean the point, as set forth in Appendix A to this LGIA, where the Interconnection Facilities connect to the Participating TO's Transmission System.

**QF PGA** shall mean a Qualifying Facility Participating Generator Agreement specifying the special provisions for the operating relationship between a Qualifying Facility and the CAISO, a pro forma version of which is set forth in Appendix B.3 of the CAISO Tariff.

**Qualifying Facility** shall mean a qualifying cogeneration facility or qualifying small power production facility, as defined in the Code of Federal Regulations, Title 18, Part 292 (18 C.F.R. §292).

**Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under this LGIA, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

**Scoping Meeting** shall mean the meeting among representatives of the Interconnection Customer, the Participating TO(s), other Affected Systems, and the CAISO conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

**Stand Alone Network Upgrades** shall mean Network Upgrades that the Interconnection Customer may construct without affecting day-to-day operations of the CAISO Controlled Grid or Affected Systems during their construction. The Participating TO, the CAISO, and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to this LGIA.

**System Protection Facilities** shall mean the equipment, including necessary protection signal communications equipment, that protects (1) the Participating TO's Transmission System, Participating TO's Interconnection Facilities, CAISO Controlled Grid, and Affected Systems from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the CAISO Controlled Grid, Participating TO's

Interconnection Facilities, and Affected Systems or on other delivery systems or other generating systems to which the CAISO Controlled Grid is directly connected.

7. **Transmission Control Agreement** shall mean CAISO FERC Electric Tariff No.

**Transmission Revenue Balancing Account** shall have the meaning set forth in Appendix A of the CAISO Tariff.

**Trial Operation** shall mean the period during which the Interconnection Customer is engaged in on-site test operations and commissioning of an Electric Generating Unit prior to Commercial Operation.

## **ARTICLE 2. EFFECTIVE DATE, TERM AND TERMINATION**

- 2.1 Effective Date.** This LGIA shall become effective upon execution by all Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. The CAISO and Participating TO shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.
- 2.2 Term of Agreement.** Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of thirty (30) years from the Effective Date and shall be automatically renewed for each successive one-year period thereafter.
- 2.3 Termination Procedures.**
- 2.3.1 Written Notice.** This LGIA may be terminated by the Interconnection Customer after giving the CAISO and the Participating TO ninety (90) Calendar Days advance written notice, or by the CAISO and the Participating TO notifying FERC after the Generating Facility permanently ceases Commercial Operation.
- 2.3.2 Default.** A Party may terminate this LGIA in accordance with Article 17.
- 2.3.3 Suspension of Work.** This LGIA may be deemed terminated in accordance with Article 5.16.
- 2.3.4** Notwithstanding Articles 2.3.1, 2.3.2, and 2.3.3, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA (if applicable), which notice has been accepted for filing by FERC, and the Interconnection Customer has fulfilled its termination cost obligations under Article 2.4.
- 2.3.5 Partial Termination.** The Parties have included within this LGIA a provision for Partial Termination of this LGIA, the terms of which are set

forth in Article 2.4.4. Notwithstanding any other term of this LGIA, Partial Termination shall be determined to have occurred in any and all circumstances where (i) one or more sequences or Electric Generating Units for which the Interconnection Customer has secured Partial Termination eligibility are terminated, (ii) this LGIA has not been terminated in its entirety and (iii) all sequences or Electric Generating Units have not been disconnected pursuant to Article 2.5.

- 2.4 Termination Costs.** Immediately upon the other Parties' receipt of a notice of the termination of this LGIA pursuant to Article 2.3 above, the CAISO and the Participating TO will determine the total cost responsibility of the Interconnection Customer. If, as of the date of the other Parties' receipt of the notice of termination, the Interconnection Customer has not already paid its share of Network Upgrade costs, as set forth in Appendix G to this LGIA, the Participating TO will liquidate the Interconnection Customer's Interconnection Financial Security associated with its cost responsibility for Network Upgrades, in accordance with Section 9.4 of the GIP.

The Interconnection Customer will also be responsible for all costs incurred or irrevocably committed to be incurred in association with the construction of the Participating TO's Interconnection Facilities (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) and other such expenses, including any Distribution Upgrades for which the Participating TO or CAISO has incurred expenses or has irrevocably committed to incur expenses and has not been reimbursed by the Interconnection Customer, as of the date of the other Parties' receipt of the notice of termination, subject to the limitations set forth in this Article 2.4. However, to the extent that the costs of the Participating TO's Network Upgrades have received Abandoned Plant Approval, the Interconnection Customer shall not be responsible for those termination charges. Nothing in this Article 2.4 shall limit the Parties' rights under Article 17. If, as of the date of the other Parties' receipt of the notice of termination, the Interconnection Customer has not already reimbursed the Participating TO and the CAISO for costs incurred to construct the Participating TO's Interconnection Facilities, the Participating TO will liquidate the Interconnection Customer's Interconnection Financial Security associated with the construction of the Participating TO's Interconnection Facilities, in accordance with Section 9.4 of the GIP. If the amount of the Interconnection Financial Security liquidated by the Participating TO under this Article 2.4 is insufficient to compensate the CAISO and the Participating TO for actual costs associated with the construction of the Participating TO's Interconnection Facilities contemplated in this Article, any additional amounts will be the responsibility of the Interconnection Customer, subject to the provisions of Section 9.4 of the GIP. Any such additional amounts due from the Interconnection Customer beyond the amounts covered by its Interconnection Financial Security will be due to the Participating TO immediately upon termination of this LGIA in accordance with Section 9.4 of the GIP.

If the amount of the Interconnection Financial Security exceeds the Interconnection Customer's cost responsibility under Section 9.4 of the GIP, any excess amount will be released to the Interconnection Customer in accordance with Section 9.4 of the GIP.

(a) *Interrelationship of Abandoned Plant Approval and Termination Costs.* As the Participating TO has been granted Abandoned Plant Approval, the Interconnection Customer shall not be responsible for any termination costs for the Network Upgrades that SCE will upfront finance. The Parties acknowledge and agree that the Partial Termination Charge does not apply in situations of termination of this LGIA in its entirety, and no reduction of the Partial Termination Charge shall be made by reason of Abandoned Plant Approval.

(b) *Interrelationship of Termination of the Entire LGIA under Article 2.4 and Partial Termination under 2.4.4.* Nothing in this Article 2.4 shall limit the operation of those provisions pertaining to Partial Termination or the Partial Termination Charge contained in Article 2.4.4. In the event of Partial Termination, the provisions of Article 2.4 shall govern.

**2.4.1** Notwithstanding the foregoing, in the event of termination by a Party, all Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. With respect to any portion of the Participating TO's Interconnection Facilities that have not yet been constructed or installed, the Participating TO shall to the extent possible and with the Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event the Interconnection Customer elects not to authorize such cancellation, the Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Participating TO shall deliver such material and equipment, and, if necessary, assign such contracts, to the Interconnection Customer as soon as practicable, at the Interconnection Customer's expense. To the extent that the Interconnection Customer has already paid the Participating TO for any or all such costs of materials or equipment not taken by the Interconnection Customer, the Participating TO shall promptly refund such amounts to the Interconnection Customer, less any costs, including penalties, incurred by the Participating TO to cancel any pending orders of or return such materials, equipment, or contracts.

**2.4.2** The Participating TO may, at its option, retain any portion of such materials, equipment, or facilities that the Interconnection Customer chooses not to accept delivery of, in which case the Participating TO shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

**2.4.3** With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

**2.4.4 Partial Termination.** The Parties agree that this LGIA shall provide for Partial Termination on the terms and conditions of this Article 2.4.4. This Article 2.4.4 shall apply only in the event of Partial Termination and shall not apply if this LGIA is terminated with respect to the entire Generating Facility. Partial Termination shall be deemed to have occurred, and the terms of this Article 2.4.4 shall apply in any and all situations of termination under this LGIA where the LGIA is not terminated in its entirety with the corresponding disconnection of all Electric Generating Units or sequences of the Generating Facility that are the subject of this LGIA; provided, however, that Partial Termination may occur only with respect to those Electric Generating Units for which the Interconnection Customer has previously provided Partial Termination Charge Security, such that no Partial Termination of an Electric Generating Unit may occur for which the Partial Termination right has not been secured.

**2.4.4.1** Except as set forth in Appendix A, Section 14, Table 2B, in the event of Partial Termination, the Interconnection Customer shall pay a Partial Termination Charge. The Partial Termination Charge shall be payable to the CAISO and shall be secured by the Partial Termination Charge Security. The Partial Termination Charge Security shall correspond to the Partial Termination Charge which shall be an amount equal to the product of ten percent (10%) of the dollar amount of the Interconnection Customer's cost responsibility for the Network Upgrades in the absence of Participating TO upfront funding for the entire Phased Generating Facility times (multiplied by) the ratio of the megawatt capacity of the portion of the Phased Generating Facility that is terminated to the megawatt capacity of the entire Phased Generating Facility. The following specific items related to Partial Termination are set forth in Appendix A, Section 12: the amount of the Partial Termination Charge and Partial Termination Charge Security; the timing for posting of the security, and the details for reduction of the security for Electric Generating Units that achieve Commercial Operation prior to Partial Termination.

**2.4.4.2** Partial Termination may be exercised following the delivery of the Partial Termination Charge Security for the Electric Generating Units for which the Interconnection Customer has elected to make the Partial Termination available either: (i) at the option of the Interconnection Customer, exercisable in its sole discretion; or, (ii) upon notice at the mutual discretion of the Participating TO's and the CAISO, (a) upon failure

of the Interconnection Customer to achieve Commercial Operation of such Electric Generating Units within the time period specified in Appendix A, Section 12(d), or (b) upon the failure of the Interconnection Customer to meet any of the milestones set forth in Appendix A, subject to the terms and conditions of Appendix A, Section 14(d). The notice referenced in this Article 2.4.4.2 may run concurrently with any other notice provided by the Party under this LGIA (including notices pertaining to Default, or failure to meet milestones relating to decision points) and shall not provide the noticed Parties with any additional period of time for cure in such other notices.

- 2.4.4.3** Upon written notice by either (i) the Interconnection Customer to the other Parties; or (ii) the Participating TO and the CAISO to the Interconnection Customer; that the noticing Party has invoked Partial Termination, the Partial Termination Charge shall become immediately due and owing, and the CAISO shall liquidate the Partial Termination Charge Security for collection of the applicable Partial Termination Charge, and apply such Partial Termination Charge funds as specified in Section 2.4.4.5.
- 2.4.4.4** Upon Partial Termination, the Parties shall amend this LGIA to remove from this LGIA the terms and conditions specifying continuing rights and obligations of the Parties with respect to the applicable Electric Generating Unit(s) of the Phased Generating Facility which have been the subject of the Partial Termination, and to specify the continuing rights and obligations of the Parties with respect to the Electric Generating Units which remain the subject of the LGIA. The amended LGIA shall reflect that the Parties have partially terminated the LGIA as to the terminated Electric Generating Unit(s), but not as to any provisions relevant to the Electric Generating Unit(s) for which Partial Termination has not been exercised. The amended LGIA shall further reflect the lower generation capacity of the Generating Facility in its new condition following Partial Termination, and, to the extent that the interconnection configuration that has been modified as a result of the Partial Termination, shall set forth the modified configuration in the amended and restated Appendices to this LGIA.
- 2.4.4.5** After written notice of Partial Termination under Article 2.4.4.5, and the expiration of any opportunity to cure relating to any concurrent notices (such as notices of Default or notices relating to milestones and decision points) the CAISO shall cause the Partial Termination Charge funds to be applied and disbursed in such a manner as to cause a credit toward the Transmission Revenue Balancing Account ("TRBA") of the Participating TO. The Parties agree to cooperate and execute such agreements and undertake such actions as may be necessary to apply the funds to credit this account.

**2.4.4.6** If this LGIA is terminated in its entirety prior to any event of Partial Termination, then any Partial Termination Charge Security which was provided to the CAISO prior to the Partial Termination shall be returned to the Interconnection Customer. The Parties acknowledge that there could be a situation where the LGIA was partially terminated in one transaction, followed by a termination of the entire LGIA in a subsequent transaction, in that event, the amount of Partial Termination Charge Security associated with such previous Partial Termination shall not be returned to the Interconnection Customer.

**2.4.4.7** In the event of Partial Termination, the Partial Termination Charge and application of such charge as a credit to the Participating TO's TRBA shall serve as the recourse of the CAISO and the Participating TO for any costs associated with the Network Upgrades that are the subject of upfront financing by the Participating TO as described in this LGIA, and the Interconnection Customer shall not be responsible for payment to the CAISO or the Participating TO for any further costs, charges or expenses attributable to the Network Upgrades that the Participating TO is obligated to finance as described in this LGIA by virtue of its commitment to provide upfront financing.

**2.5 Disconnection.** Upon termination of this LGIA in its entirety, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Participating TO's Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

**2.6 Survival.** This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Parties pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

### **ARTICLE 3. REGULATORY FILINGS AND CAISO TARIFF COMPLIANCE**

**3.1 Filing.** The Participating TO and the CAISO shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority(ies), if required. The Interconnection Customer may request that any information so provided be subject to the confidentiality provisions of Article 22. If the Interconnection Customer has executed this LGIA, or any amendment thereto, the Interconnection Customer shall reasonably cooperate with the Participating TO



and CAISO with respect to such filing and to provide any information reasonably requested by the Participating TO or CAISO needed to comply with applicable regulatory requirements.

- 3.2 Agreement Subject to CAISO Tariff.** The Interconnection Customer will comply with all applicable provisions of the CAISO Tariff, including the GIP.
- 3.3 Relationship Between this LGIA and the CAISO Tariff.** With regard to rights and obligations between the Participating TO and the Interconnection Customer, if and to the extent a matter is specifically addressed by a provision of this LGIA (including any appendices, schedules or other attachments to this LGIA), the provisions of this LGIA shall govern. If and to the extent a provision of this LGIA is inconsistent with the CAISO Tariff and dictates rights and obligations between the CAISO and the Participating TO or the CAISO and the Interconnection Customer, the CAISO Tariff shall govern.
- 3.4 Relationship Between this LGIA and the QF PGA.** With regard to the rights and obligations of a Qualifying Facility that has entered into a QF PGA with the CAISO and has entered into this LGIA, if and to the extent a matter is specifically addressed by a provision of the QF PGA that is inconsistent with this LGIA, the terms of the QF PGA shall govern.

#### **ARTICLE 4. SCOPE OF SERVICE**

- 4.1 Interconnection Service.** Interconnection Service allows the Interconnection Customer to connect the Large Generating Facility to the Participating TO's Transmission System and be eligible to deliver the Large Generating Facility's output using the available capacity of the CAISO Controlled Grid. To the extent the Interconnection Customer wants to receive Interconnection Service, the Participating TO shall construct facilities identified in Appendices A and C that the Participating TO is responsible to construct.

Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on the CAISO Controlled Grid without incurring congestion costs. In the event of transmission constraints on the CAISO Controlled Grid, the Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in the CAISO Tariff in the same manner as all other resources.

- 4.2 Provision of Service.** The Participating TO and the CAISO shall provide Interconnection Service for the Large Generating Facility.
- 4.3 Performance Standards.** Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is

required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is the CAISO or Participating TO, then that Party shall amend the LGIA and submit the amendment to FERC for approval.

- 4.4 No Transmission Service.** The execution of this LGIA does not constitute a request for, nor the provision of, any transmission service under the CAISO Tariff, and does not convey any right to deliver electricity to any specific customer or point of delivery.
- 4.5 Interconnection Customer Provided Services.** The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

#### **ARTICLE 5. FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

Interconnection Facilities, Network Upgrades, and Distribution Upgrades shall be studied, designed, and constructed pursuant to Good Utility Practice. Such studies, design and construction shall be based on the assumed accuracy and completeness of all technical information received by the Participating TO and the CAISO from the Interconnection Customer associated with interconnecting the Large Generating Facility.

- 5.1 Options.** Unless otherwise mutually agreed among the Parties, the Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Participating TO's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities, Network Upgrades, and Distribution Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.
- 5.1.1 Standard Option.** The Participating TO shall design, procure, and construct the Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades, using Reasonable Efforts to complete the Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades by the dates set forth in Appendix B, Milestones. The Participating TO shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Participating TO reasonably expects that it will not be able to complete the Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades by the specified dates, the Participating TO shall promptly provide written notice to the

Interconnection Customer and the CAISO and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

**5.1.2 Alternate Option.** If the dates designated by the Interconnection Customer are acceptable to the Participating TO, the Participating TO shall so notify the Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities by the designated dates.

If the Participating TO subsequently fails to complete the Participating TO's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; the Participating TO shall pay the Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by the Interconnection Customer shall be extended day for day for each day that the CAISO refuses to grant clearances to install equipment.

**5.1.3 Option to Build.** If the dates designated by the Interconnection Customer are not acceptable to the Participating TO, the Participating TO shall so notify the Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, the Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades. If the Interconnection Customer elects to exercise its option to assume responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades, it shall so notify the Participating TO within thirty (30) Calendar Days of receipt of the Participating TO's notification that the designated dates are not acceptable to the Participating TO. The Participating TO, CAISO, and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A to this LGIA. Except for Stand Alone Network Upgrades, the Interconnection Customer shall have no right to construct Network Upgrades under this option.

**5.1.4 Negotiated Option.** If the Interconnection Customer elects not to exercise its option under Article 5.1.3, Option to Build, the Interconnection Customer shall so notify the Participating TO within thirty (30) Calendar Days of receipt of the Participating TO's notification that the designated

dates are not acceptable to the Participating TO, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades by the Interconnection Customer) pursuant to which the Participating TO is responsible for the design, procurement and construction of the Participating TO's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such terms and conditions, the Participating TO shall assume responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities and Network Upgrades pursuant to Article 5.1.1, Standard Option.

**5.2 General Conditions Applicable to Option to Build.** If the Interconnection Customer assumes responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades,

(1) the Interconnection Customer shall engineer, procure equipment, and construct the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Participating TO;

(2) The Interconnection Customer's engineering, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which the Participating TO would be subject in the engineering, procurement or construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades;

(3) the Participating TO shall review, and the Interconnection Customer shall obtain the Participating TO's approval of, the engineering design, equipment acceptance tests, and the construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades, which approval shall not be unreasonably withheld, and the CAISO may, at its option, review the engineering design, equipment acceptance tests, and the construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades;

(4) prior to commencement of construction, the Interconnection Customer shall provide to the Participating TO, with a copy to the CAISO for informational purposes, a schedule for construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from the Participating TO;

- (5) at any time during construction, the Participating TO shall have the right to gain unrestricted access to the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;
- (6) at any time during construction, should any phase of the engineering, equipment procurement, or construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by the Participating TO, the Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades;
- (7) the Interconnection Customer shall indemnify the CAISO and Participating TO for claims arising from the Interconnection Customer's construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;
- (8) The Interconnection Customer shall transfer control of the Participating TO's Interconnection Facilities to the Participating TO and shall transfer Operational Control of Stand Alone Network Upgrades to the CAISO;
- (9) Unless the Parties otherwise agree, the Interconnection Customer shall transfer ownership of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades to the Participating TO. As soon as reasonably practicable, but within twelve months after completion of the construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades, the Interconnection Customer shall provide an invoice of the final cost of the construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades to the Participating TO, which invoice shall set forth such costs in sufficient detail to enable the Participating TO to reflect the proper costs of such facilities in its transmission rate base and to identify the investment upon which refunds will be provided;
- (10) the Participating TO shall accept for operation and maintenance the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2; and
- (11) The Interconnection Customer's engineering, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of the "Option to Build" conditions set forth in Appendix C. Interconnection Customer

shall deliver to the Participating TO "as-built" drawings, information, and any other documents that are reasonably required by the Participating TO to assure that the Interconnection Facilities and Stand-Alone Network Upgrades are built to the standards and specifications required by the Participating TO.

**5.3 Liquidated Damages.** The actual damages to the Interconnection Customer, in the event the Participating TO's Interconnection Facilities or Network Upgrades are not completed by the dates designated by the Interconnection Customer and accepted by the Participating TO pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Participating TO to the Interconnection Customer in the event that the Participating TO does not complete any portion of the Participating TO's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of the Participating TO's Interconnection Facilities and Network Upgrades, in the aggregate, for which the Participating TO has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Participating TO's Interconnection Facilities and Network Upgrades for which the Participating TO has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Participating TO to the Interconnection Customer as just compensation for the damages caused to the Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA. Liquidated damages, when the Parties agree to them, are the exclusive remedy for the Participating TO's failure to meet its schedule.

No liquidated damages shall be paid to the Interconnection Customer if: (1) the Interconnection Customer is not ready to commence use of the Participating TO's Interconnection Facilities or Network Upgrades to take the delivery of power for the Electric Generating Unit's Trial Operation or to export power from the Electric Generating Unit on the specified dates, unless the Interconnection Customer would have been able to commence use of the Participating TO's Interconnection Facilities or Network Upgrades to take the delivery of power for Electric Generating Unit's Trial Operation or to export power from the Electric Generating Unit, but for the Participating TO's delay; (2) the Participating TO's failure to meet the specified dates is the result of the action or inaction of the Interconnection Customer or any other interconnection customer who has entered into an interconnection agreement with the CAISO and/or Participating TO, action or inaction by the CAISO, or any cause beyond the Participating TO's reasonable control or reasonable ability to cure; (3) the Interconnection Customer has

assumed responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

In no event shall the CAISO have any responsibility or liability to the Interconnection Customer for liquidated damages pursuant to the provisions of this Article 5.3.

- 5.4 Power System Stabilizers.** The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with Applicable Reliability Standards, the guidelines and procedures established by the Applicable Reliability Council, and the provisions of Section 4.6.5.1 of the CAISO Tariff. The CAISO reserves the right to establish reasonable minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, the Interconnection Customer shall immediately notify the CAISO and the Participating TO and restore the Power System Stabilizers to operation as soon as possible. The CAISO shall have the right to order the reduction in output or disconnection of the Large Generating Facility if the reliability of the CAISO Controlled Grid would be adversely affected as a result of improperly tuned Power System Stabilizers. The requirements of this Article 5.4 shall apply to Asynchronous Generating Facilities in accordance with Appendix H.
- 5.5 Equipment Procurement.** If responsibility for construction of the Participating TO's Interconnection Facilities or Network Upgrades is to be borne by the Participating TO, then the Participating TO shall commence design of the Participating TO's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:
- 5.5.1** The CAISO, in coordination with the applicable Participating TO(s), has completed the Phase II Interconnection Study or Governing Independent Study Process Interconnection Study pursuant to the Generator Interconnection Facilities Study Process Agreement or other applicable study process agreement;
  - 5.5.2** The Participating TO has received written authorization to proceed with design and procurement from the Interconnection Customer by the date specified in Appendix B, Milestones; and
  - 5.5.3** The Interconnection Customer has provided security to the Participating TO in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

- 5.6 Construction Commencement.** The Participating TO shall commence construction of the Participating TO's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:
- 5.6.1** Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;
  - 5.6.2** Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Participating TO's Interconnection Facilities and Network Upgrades;
  - 5.6.3** The Participating TO has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix B, Milestones; and
  - 5.6.4** The Interconnection Customer has provided payment and security to the Participating TO in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.
- 5.7 Work Progress.** The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Any Party may, at any time, request a progress report from another Party. If, at any time, the Interconnection Customer determines that the completion of the Participating TO's Interconnection Facilities will not be required until after the specified In-Service Date, the Interconnection Customer will provide written notice to the Participating TO and CAISO of such later date upon which the completion of the Participating TO's Interconnection Facilities will be required.
- 5.8 Information Exchange.** As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Interconnection Customer's Interconnection Facilities and Participating TO's Interconnection Facilities and compatibility of the Interconnection Facilities with the Participating TO's Transmission System, and shall work diligently and in good faith to make any necessary design changes.
- 5.9 Limited Operation.** If any of the Participating TO's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Electric Generating Unit, the Participating TO and/or CAISO, as applicable, shall, upon the request and at the expense of the Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Electric Generating Unit and the Interconnection Customer's Interconnection Facilities may operate prior to the completion of the Participating TO's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. The Participating TO and



CAISO shall permit Interconnection Customer to operate the Electric Generating Unit and the Interconnection Customer's Interconnection Facilities in accordance with the results of such studies.

- 5.10 Interconnection Customer's Interconnection Facilities.** The Interconnection Customer shall, at its expense, design, procure, construct, own and install the Interconnection Customer's Interconnection Facilities, as set forth in Appendix A.

**5.10.1 Large Generating Facility and Interconnection Customer's Interconnection Facilities Specifications.** In addition to the Interconnection Customer's responsibility to submit technical data with its Interconnection Request as required by Section 3.5.1 of the GIP, the Interconnection Customer shall submit all remaining necessary specifications for the Interconnection Customer's Interconnection Facilities and Large Generating Facility, including System Protection Facilities, to the Participating TO and the CAISO at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. The Participating TO and the CAISO shall review such specifications pursuant to this LGIA and the GIP to ensure that the Interconnection Customer's Interconnection Facilities and Large Generating Facility are compatible with the technical specifications, operational control, safety requirements, and any other applicable requirements of the Participating TO and the CAISO and comment on such specifications within thirty (30) Calendar Days of the Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

**5.10.2 Participating TO's and CAISO's Review.** The Participating TO's and the CAISO's review of the Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the Interconnection Customer's Interconnection Facilities. Interconnection Customer shall make such changes to the Interconnection Customer's Interconnection Facilities as may reasonably be required by the Participating TO or the CAISO, in accordance with Good Utility Practice, to ensure that the Interconnection Customer's Interconnection Facilities are compatible with the technical specifications, Operational Control, and safety requirements of the Participating TO or the CAISO.

**5.10.3 Interconnection Customer's Interconnection Facilities Construction.** The Interconnection Customer's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Participating TO and Interconnection Customer agree on another mutually acceptable deadline, the Interconnection Customer shall

deliver to the Participating TO and CAISO "as-built" drawings, information and documents for the Interconnection Customer's Interconnection Facilities and the Electric Generating Unit(s), such as: a one-line diagram, a site plan showing the Large Generating Facility and the Interconnection Customer's Interconnection Facilities, plan and elevation drawings showing the layout of the Interconnection Customer's Interconnection Facilities, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the Interconnection Customer's Interconnection Facilities, and the impedances (determined by factory tests) for the associated step-up transformers and the Electric Generating Units. The Interconnection Customer shall provide the Participating TO and the CAISO specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications, if applicable. Any deviations from the relay settings, machine specifications, and other specifications originally submitted by the Interconnection Customer shall be assessed by the Participating TO and the CAISO pursuant to the appropriate provisions of this LGIA and the GIP.

**5.10.4 Interconnection Customer to Meet Requirements of the Participating TO's Interconnection Handbook.** The Interconnection Customer shall comply with the Participating TO's Interconnection Handbook.

**5.11 Participating TO's Interconnection Facilities Construction.** The Participating TO's Interconnection Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Participating TO and Interconnection Customer agree on another mutually acceptable deadline, the Participating TO shall deliver to the Interconnection Customer and the CAISO the following "as-built" drawings, information and documents for the Participating TO's Interconnection Facilities. No as-built drawings will be provided.

The Participating TO will obtain control for operating and maintenance purposes of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities. Pursuant to Article 5.2, the CAISO will obtain Operational Control of the Stand Alone Network Upgrades prior to the Commercial Operation Date.

**5.12 Access Rights.** Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable

agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) interconnect the Large Generating Facility with the Participating TO's Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Participating TO's Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

- 5.13 Lands of Other Property Owners.** If any part of the Participating TO's Interconnection Facilities and/or Network Upgrades are to be installed on property owned by persons other than the Interconnection Customer or Participating TO, the Participating TO shall at the Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Participating TO's Interconnection Facilities and/or Network Upgrades upon such property.
- 5.14 Permits.** Participating TO and Interconnection Customer shall cooperate with each other in good faith in obtaining all permits, licenses and authorization that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. With respect to this paragraph, the Participating TO shall provide permitting assistance to the Interconnection Customer comparable to that provided to the Participating TO's own, or an Affiliate's generation.
- 5.15 Early Construction of Base Case Facilities.** The Interconnection Customer may request the Participating TO to construct, and the Participating TO shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Participating TO's Transmission System which are included in the Base Case of the Interconnection Studies for the Interconnection Customer, and which also are required to be constructed for another interconnection customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.
- 5.16 Suspension.** The Interconnection Customer reserves the right, upon written notice to the Participating TO and the CAISO, to suspend at any time all work associated with the construction and installation of the Participating TO's

Interconnection Facilities, Network Upgrades, and/or Distribution Upgrades required under this LGIA, other than Network Upgrades identified in the Phase II Interconnection Study as common to multiple Generating Facilities, with the condition that the Participating TO's electrical system and the CAISO Controlled Grid shall be left in a safe and reliable condition in accordance with Good Utility Practice and the Participating TO's safety and reliability criteria and the CAISO's Applicable Reliability Standards. In such event, the Interconnection Customer shall be responsible for all reasonable and necessary costs which the Participating TO (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Participating TO's electric system during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which the Participating TO cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, the Participating TO shall obtain Interconnection Customer's authorization to do so.

The Participating TO shall invoice the Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work required under this LGIA pursuant to this Article 5.16, and has not requested the Participating TO to recommence the work or has not itself recommenced work required under this LGIA in time to ensure that the new projected Commercial Operation Date for the full Generating Facility Capacity of the Large Generating Facility is no more than three (3) years from the Commercial Operation Date identified in Appendix B hereto, this LGIA shall be deemed terminated and the Interconnection Customer's responsibility for costs will be determined in accordance with Article 2.4 of this LGIA. The suspension period shall begin on the date the suspension is requested, or the date of the written notice to the Participating TO and the CAISO, if no effective date is specified.

## **5.17 Taxes.**

**5.17.1 Interconnection Customer Payments Not Taxable.** The Parties intend that all payments or property transfers made by the Interconnection Customer to the Participating TO for the installation of the Participating TO's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as a refundable advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

**5.17.2 Representations And Covenants.** In accordance with IRS Notice 2001-82 and IRS Notice 88-129, the Interconnection Customer represents and

covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the CAISO Controlled Grid, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Participating TO for the Participating TO's Interconnection Facilities will be capitalized by the Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Participating TO's Interconnection Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At the Participating TO's request, the Interconnection Customer shall provide the Participating TO with a report from an independent engineer confirming its representation in clause (iii), above. The Participating TO represents and covenants that the cost of the Participating TO's Interconnection Facilities paid for by the Interconnection Customer without the possibility of refund or credit will have no net effect on the base upon which rates are determined.

**5.17.3 Indemnification for the Cost Consequence of Current Tax Liability Imposed Upon the Participating TO.** Notwithstanding Article 5.17.1, the Interconnection Customer shall protect, indemnify and hold harmless the Participating TO from the cost consequences of any current tax liability imposed against the Participating TO as the result of payments or property transfers made by the Interconnection Customer to the Participating TO under this LGIA for Interconnection Facilities, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by the Participating TO.

The Participating TO shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges the Interconnection Customer under this LGIA unless (i) the Participating TO has determined, in good faith, that the payments or property transfers made by the Interconnection Customer to the Participating TO should be reported as income subject to taxation or (ii) any Governmental Authority directs the Participating TO to report payments or property as income subject to taxation; provided, however, that the Participating TO may require the Interconnection Customer to provide security for Interconnection Facilities, in a form reasonably acceptable to the Participating TO (such as a parental guarantee or a letter of credit), in an

amount equal to the cost consequences of any current tax liability under this Article 5.17. The Interconnection Customer shall reimburse the Participating TO for such costs on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from the Participating TO of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by the Participating TO upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

**5.17.4 Tax Gross-Up Amount.** The Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that the Interconnection Customer will pay the Participating TO, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on the Participating TO ("Current Taxes") on the excess of (a) the gross income realized by the Participating TO as a result of payments or property transfers made by the Interconnection Customer to the Participating TO under this LGIA (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Participating TO to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on the Participating TO's composite federal and state tax rates at the time the payments or property transfers are received and the Participating TO will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting the Participating TO's anticipated tax depreciation deductions as a result of such payments or property transfers by the Participating TO's current weighted average cost of capital. Thus, the formula for calculating the Interconnection Customer's liability to the Participating TO pursuant to this Article 5.17.4 can be expressed as follows:  $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$ . Interconnection Customer's estimated tax liability in the event taxes are

imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

**5.17.5 Private Letter Ruling or Change or Clarification of Law.** At the Interconnection Customer's request and expense, the Participating TO shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by the Interconnection Customer to the Participating TO under this LGIA are subject to federal income taxation. The Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of the Interconnection Customer's knowledge. The Participating TO and Interconnection Customer shall cooperate in good faith with respect to the submission of such request, provided, however, the Interconnection Customer and the Participating TO explicitly acknowledge (and nothing herein is intended to alter) Participating TO's obligation under law to certify that the facts presented in the ruling request are true, correct and complete.

The Participating TO shall keep the Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes the Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. The Participating TO shall allow the Interconnection Customer to attend all meetings with IRS officials about the request and shall permit the Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

**5.17.6 Subsequent Taxable Events.** If, within 10 years from the date on which the relevant Participating TO's Interconnection Facilities are placed in service, (i) the Interconnection Customer Breaches the covenants contained in Article 5.17.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this LGIA terminates and the Participating TO retains ownership of the Interconnection Facilities and Network Upgrades, the Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on the Participating TO, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90-60.

**5.17.7 Contests.** In the event any Governmental Authority determines that the Participating TO's receipt of payments or property constitutes income that is subject to taxation, the Participating TO shall notify the Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by the Interconnection Customer and at the

Interconnection Customer's sole expense, the Participating TO may appeal, protest, seek abatement of, or otherwise oppose such determination. Upon the Interconnection Customer's written request and sole expense, the Participating TO may file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. The Participating TO reserve the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but the Participating TO shall keep the Interconnection Customer informed, shall consider in good faith suggestions from the Interconnection Customer about the conduct of the contest, and shall reasonably permit the Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

The Interconnection Customer shall pay to the Participating TO on a periodic basis, as invoiced by the Participating TO, the Participating TO's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest, including any costs associated with obtaining the opinion of independent tax counsel described in this Article 5.17.7. The Participating TO may abandon any contest if the Interconnection Customer fails to provide payment to the Participating TO within thirty (30) Calendar Days of receiving such invoice.

At any time during the contest, the Participating TO may agree to a settlement either with the Interconnection Customer's consent or, if such consent is refused, after obtaining written advice from independent nationally-recognized tax counsel, selected by the Participating TO, but reasonably acceptable to the Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. The Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by the Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding paragraph. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. The Participating TO may also settle any tax controversy without receiving the Interconnection Customer's consent or any such written advice; however, any such settlement will relieve the Interconnection Customer from any obligation to indemnify the Participating TO for the tax at issue in the contest (unless the failure to obtain written advice is attributable to the Interconnection Customer's unreasonable refusal to the appointment of independent tax counsel).

**5.17.8 Refund.** In the event that (a) a private letter ruling is issued to the Participating TO which holds that any amount paid or the value of any



property transferred by the Interconnection Customer to the Participating TO under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to the Participating TO in good faith that any amount paid or the value of any property transferred by the Interconnection Customer to the Participating TO under the terms of this LGIA is not taxable to the Participating TO, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by the Interconnection Customer to the Participating TO are not subject to federal income tax, or (d) if the Participating TO receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by the Interconnection Customer to the Participating TO pursuant to this LGIA, the Participating TO shall promptly refund to the Interconnection Customer the following:

(i) any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) interest on any amounts paid by the Interconnection Customer to the Participating TO for such taxes which the Participating TO did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date payment was made by the Interconnection Customer to the date the Participating TO refunds such payment to the Interconnection Customer, and

(iii) with respect to any such taxes paid by the Participating TO, any refund or credit the Participating TO receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Participating TO for such overpayment of taxes (including any reduction in interest otherwise payable by the Participating TO to any Governmental Authority resulting from an offset or credit); provided, however, that the Participating TO will remit such amount promptly to the Interconnection Customer only after and to the extent that the Participating TO has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Participating TO's Interconnection Facilities.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

**5.17.9 Taxes Other Than Income Taxes.** Upon the timely request by the Interconnection Customer, and at the Interconnection Customer's sole expense, the CAISO or Participating TO may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against the CAISO or Participating TO for which the Interconnection Customer may be required to reimburse the CAISO or Participating TO under the terms of this LGIA. The Interconnection Customer shall pay to the Participating TO on a periodic basis, as invoiced by the Participating TO, the Participating TO's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. The Interconnection Customer, the CAISO, and the Participating TO shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by the Interconnection Customer to the CAISO or Participating TO for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, the Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by the Participating TO.

**5.18 Tax Status.** Each Party shall cooperate with the others to maintain the other Parties' tax status. Nothing in this LGIA is intended to adversely affect the CAISO's or any Participating TO's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

**5.19 Modification.**

**5.19.1 General.** The Interconnection Customer or the Participating TO may undertake modifications to its facilities, subject to the provisions of this LGIA and the CAISO Tariff. If a Party plans to undertake a modification that reasonably may be expected to affect the other Parties' facilities, that Party shall provide to the other Parties sufficient information regarding such modification so that the other Parties may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Parties at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require the Interconnection Customer to submit an Interconnection Request, the CAISO or Participating TO shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the CAISO Controlled Grid, Participating TO's Interconnection Facilities, Network Upgrades or Distribution Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof. The Participating TO and the CAISO shall determine if a Large Generating Facility modification is a Material Modification in accordance with the GIP.

**5.19.2 Standards.** Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA and Good Utility Practice.

**5.19.3 Modification Costs.** The Interconnection Customer shall not be directly assigned the costs of any additions, modifications, or replacements that the Participating TO makes to the Participating TO's Interconnection Facilities or the Participating TO's Transmission System to facilitate the interconnection of a third party to the Participating TO's Interconnection Facilities or the Participating TO's Transmission System, or to provide transmission service to a third party under the CAISO Tariff. The Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to the Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

## **ARTICLE 6. TESTING AND INSPECTION**

**6.1 Pre-Commercial Operation Date Testing and Modifications.** Prior to the Commercial Operation Date, the Participating TO shall test the Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades and the Interconnection Customer shall test the Large Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. The Interconnection Customer shall bear the cost of all such testing and modifications. The Interconnection Customer shall not commence initial parallel operation of an Electric Generating Unit with the Participating TO's Transmission System until the Participating TO provides prior written approval, which approval shall not be unreasonably withheld, for operation of such Electric Generating Unit. The Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

- 6.2 Post-Commercial Operation Date Testing and Modifications.** Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Participating TO's Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.
- 6.3 Right to Observe Testing.** Each Party shall notify the other Parties at least fourteen (14) Calendar Days in advance of its performance of tests of its Interconnection Facilities or Generating Facility. The other Parties have the right, at their own expense, to observe such testing.
- 6.4 Right to Inspect.** Each Party shall have the right, but shall have no obligation to: (i) observe another Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of another Party's System Protection Facilities and other protective equipment; and (iii) review another Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that a Party obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be Confidential Information and treated pursuant to Article 22 of this LGIA.

## **ARTICLE 7. METERING**

- 7.1 General.** Each Party shall comply with any Applicable Reliability Standards and the Applicable Reliability Council requirements. The Interconnection Customer and CAISO shall comply with the provisions of the CAISO Tariff regarding metering, including Section 10 of the CAISO Tariff. Unless otherwise agreed by the Participating TO and the Interconnection Customer, the Participating TO may install additional Metering Equipment at the Point of Interconnection prior to any operation of any Electric Generating Unit and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at the CAISO's or Participating TO's option for its respective Metering Equipment, compensated to, the Point of Interconnection. The CAISO shall provide metering quantities to the Interconnection Customer upon request in accordance with the CAISO Tariff by directly polling the CAISO's meter data acquisition system. The Interconnection Customer shall bear all reasonable documented costs associated with the

purchase, installation, operation, testing and maintenance of the Metering Equipment.

- 7.2 Check Meters.** The Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check the CAISO-polled meters or the Participating TO's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except in the case that no other means are available on a temporary basis at the option of the CAISO or the Participating TO. The check meters shall be subject at all reasonable times to inspection and examination by the CAISO or Participating TO or their designees. The installation, operation and maintenance thereof shall be performed entirely by the Interconnection Customer in accordance with Good Utility Practice.
- 7.3 Participating TO Retail Metering.** The Participating TO may install retail revenue quality meters and associated equipment, pursuant to the Participating TO's applicable retail tariffs.

## **ARTICLE 8. COMMUNICATIONS**

- 8.1 Interconnection Customer Obligations.** The Interconnection Customer shall maintain satisfactory operating communications with the CAISO in accordance with the provisions of the CAISO Tariff and with the Participating TO's dispatcher or representative designated by the Participating TO. The Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. The Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to the CAISO and Participating TO as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by the CAISO and Participating TO. Any required maintenance of such communications equipment shall be performed by the Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.
- 8.2 Remote Terminal Unit.** Prior to the Initial Synchronization Date of each Electric Generating Unit, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by the Interconnection Customer, or by the Participating TO at the Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by the CAISO and by the Participating

TO through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1.

Telemetry to the CAISO shall be provided in accordance with the CAISO's technical standards for direct telemetry. For telemetry to the Participating TO, the communication protocol for the data circuit(s) shall be specified by the Participating TO. Instantaneous bi-directional real power and reactive power flow and any other required information must be telemetered directly to the location(s) specified by the Participating TO.

Each Party will promptly advise the other Parties if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by another Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

- 8.3 No Annexation.** Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

## ARTICLE 9. OPERATIONS

- 9.1 General.** Each Party shall comply with Applicable Reliability Standards and the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.
- 9.2 Balancing Authority Area Notification.** At least three months before Initial Synchronization Date, the Interconnection Customer shall notify the CAISO and Participating TO in writing of the Balancing Authority Area in which the Large Generating Facility intends to be located. If the Interconnection Customer intends to locate the Large Generating Facility in a Balancing Authority Area other than the Balancing Authority Area within whose electrically metered boundaries the Large Generating Facility is located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Balancing Authority Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Balancing Authority Area.
- 9.3 CAISO and Participating TO Obligations.** The CAISO and Participating TO shall cause the Participating TO's Transmission System to be operated and controlled in a safe and reliable manner and in accordance with this LGIA. The

Participating TO at the Interconnection Customer's expense shall cause the Participating TO's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. The CAISO and Participating TO may provide operating instructions to the Interconnection Customer consistent with this LGIA and Participating TO and CAISO operating protocols and procedures as they may change from time to time. The Participating TO and CAISO will consider changes to their operating protocols and procedures proposed by the Interconnection Customer.

- 9.4 Interconnection Customer Obligations.** The Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and the Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. The Interconnection Customer shall operate the Large Generating Facility and the Interconnection Customer's Interconnection Facilities in accordance with all applicable requirements of the Balancing Authority Area of which it is part, including such requirements as set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. A Party may request that another Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA. The Interconnection Customer shall not commence Commercial Operation of an Electric Generating Unit with the Participating TO's Transmission System until the Participating TO provides prior written approval, which approval shall not be unreasonably withheld, for operation of such Electric Generating Unit.
- 9.5 Start-Up and Synchronization.** Consistent with the Parties' mutually acceptable procedures, the Interconnection Customer is responsible for the proper synchronization of each Electric Generating Unit to the CAISO Controlled Grid.
- 9.6 Reactive Power.**
- 9.6.1 Power Factor Design Criteria.** For all Generating Facilities other than Asynchronous Generating Facilities, the Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the terminals of the Electric Generating Unit at a power factor within the range of 0.95 leading to 0.90 lagging, unless the CAISO has established different requirements that apply to all generators in the Balancing Authority Area on a comparable basis. For Asynchronous Generating Facilities, the Interconnection Customer shall design the Large Generating Facility to maintain power factor criteria in accordance with Appendix H of this LGIA.
- 9.6.2 Voltage Schedules.** Once the Interconnection Customer has synchronized an Electric Generating Unit with the CAISO Controlled Grid,

the CAISO or Participating TO shall require the Interconnection Customer to maintain a voltage schedule by operating the Electric Generating Unit to produce or absorb reactive power within the design limitations of the Electric Generating Unit set forth in Article 9.6.1 (Power Factor Design Criteria). CAISO's voltage schedules shall treat all sources of reactive power in the Balancing Authority Area in an equitable and not unduly discriminatory manner. The Participating TO shall exercise Reasonable Efforts to provide the Interconnection Customer with such schedules at least one (1) day in advance, and the CAISO or Participating TO may make changes to such schedules as necessary to maintain the reliability of the CAISO Controlled Grid or the Participating TO's electric system. The Interconnection Customer shall operate the Electric Generating Unit to maintain the specified output voltage or power factor within the design limitations of the Electric Generating Unit set forth in Article 9.6.1 (Power Factor Design Criteria), and as may be required by the CAISO to operate the Electric Generating Unit at a specific voltage schedule within the design limitations set forth in Article 9.6.1. If the Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the CAISO and the Participating TO.

**9.6.2.1 Governors and Regulators.** Whenever an Electric Generating Unit is operated in parallel with the CAISO Controlled Grid and the speed governors (if installed on the Electric Generating Unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, the Interconnection Customer shall operate the Electric Generating Unit with its speed governors and voltage regulators in automatic operation. If the Electric Generating Unit's speed governors and voltage regulators are not capable of such automatic operation, the Interconnection Customer shall immediately notify the CAISO and the Participating TO and ensure that the Electric Generating Unit operates as specified in Article 9.6.2 through manual operation and that such Electric Generating Unit's reactive power production or absorption (measured in MVARs) are within the design capability of the Electric Generating Unit(s) and steady state stability limits. The Interconnection Customer shall restore the speed governors and voltage regulators to automatic operation as soon as possible. If the Large Generating Facility's speed governors and voltage regulators are improperly tuned or malfunctioning, the CAISO shall have the right to order the reduction in output or disconnection of the Large Generating Facility if the reliability of the CAISO Controlled Grid would be adversely affected. The Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the CAISO Controlled Grid or trip any Electric Generating Unit comprising the Large Generating Facility for an under or over frequency condition



unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Balancing Authority Area on a comparable basis.

**9.6.3 Payment for Reactive Power.** CAISO is required to pay the Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from an Electric Generating Unit when the CAISO requests the Interconnection Customer to operate its Electric Generating Unit outside the range specified in Article 9.6.1, provided that if the CAISO pays other generators for reactive power service within the specified range, it must also pay the Interconnection Customer. Payments shall be pursuant to Article 11.6 or such other agreement to which the CAISO and Interconnection Customer have otherwise agreed.

## **9.7 Outages and Interruptions.**

### **9.7.1 Outages.**

**9.7.1.1 Outage Authority and Coordination.** Each Party may in accordance with Good Utility Practice in coordination with the other Parties remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact another Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to all Parties. In all circumstances any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Parties of such removal.

**9.7.1.2 Outage Schedules.** The CAISO shall post scheduled outages of CAISO Controlled Grid facilities in accordance with the provisions of the CAISO Tariff. The Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to the CAISO in accordance with the CAISO Tariff. The Interconnection Customer shall update its planned maintenance schedules in accordance with the CAISO Tariff. The CAISO may request the Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the CAISO Controlled Grid in accordance with the CAISO Tariff. Such planned maintenance schedules and updates and changes to such schedules shall be provided by the Interconnection Customer to the Participating TO concurrently with their submittal to the CAISO.

The CAISO shall compensate the Interconnection Customer for any additional direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance in accordance with the CAISO Tariff. The Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Interconnection Customer had modified its schedule of maintenance activities.

**9.7.1.3 Outage Restoration.** If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects another Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Parties, to the extent such information is known, information on the nature of the Emergency Condition, if the outage is caused by an Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage, if requested by a Party, which may be provided by e-mail or facsimile.

**9.7.2 Interruption of Service.** If required by Good Utility Practice to do so, the CAISO or the Participating TO may require the Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect the CAISO's or the Participating TO's ability to perform such activities as are necessary to safely and reliably operate and maintain the Participating TO's electric system or the CAISO Controlled Grid. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

**9.7.2.1** The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

**9.7.2.2** Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all generating facilities directly connected to the CAISO Controlled Grid, subject to any conditions specified in this LGIA;

**9.7.2.3** When the interruption or reduction must be made under circumstances which do not allow for advance notice, the CAISO or Participating TO, as applicable, shall notify the Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by

written notification, if requested by the Interconnection Customer, as soon as practicable;

**9.7.2.4** Except during the existence of an Emergency Condition, the CAISO or Participating TO shall notify the Interconnection Customer in advance regarding the timing of such interruption or reduction and further notify the Interconnection Customer of the expected duration. The CAISO or Participating TO shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer, the CAISO, and the Participating TO;

**9.7.2.5** The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, the Participating TO's Transmission System, and the CAISO Controlled Grid to their normal operating state, consistent with system conditions and Good Utility Practice.

**9.7.3 Under-Frequency and Over Frequency Conditions.** The CAISO Controlled Grid is designed to automatically activate a load-shed program as required by Applicable Reliability Standards and the Applicable Reliability Council in the event of an under-frequency system disturbance. The Interconnection Customer shall implement under-frequency and over-frequency protection set points for the Large Generating Facility as required by Applicable Reliability Standards and the Applicable Reliability Council to ensure "ride through" capability. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the Participating TO and CAISO in accordance with Good Utility Practice. The term "ride through" as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the CAISO Controlled Grid during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice. Asynchronous Generating Facilities shall be subject to frequency ride through capability requirements in accordance with Appendix H to this LGIA.

**9.7.4 System Protection and Other Control Requirements.**

**9.7.4.1 System Protection Facilities.** The Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or the Interconnection Customer's Interconnection Facilities. The Participating TO shall install at the Interconnection Customer's

expense any System Protection Facilities that may be required on the Participating TO's Interconnection Facilities or the Participating TO's Transmission System as a result of the interconnection of the Large Generating Facility and the Interconnection Customer's Interconnection Facilities.

**9.7.4.2** The Participating TO's and Interconnection Customer's protection facilities shall be designed and coordinated with other systems in accordance with Applicable Reliability Standards, Applicable Reliability Council criteria, and Good Utility Practice.

**9.7.4.3** The Participating TO and Interconnection Customer shall each be responsible for protection of its facilities consistent with Good Utility Practice.

**9.7.4.4** The Participating TO's and Interconnection Customer's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Interconnection Customer's Electric Generating Units.

**9.7.4.5** The Participating TO and Interconnection Customer will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice and, if applicable, the requirements of the Participating TO's Interconnection Handbook.

**9.7.4.6** Prior to the in-service date, and again prior to the Commercial Operation Date, the Participating TO and Interconnection Customer or their agents shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice, the standards and procedures of the Participating TO, including, if applicable, the requirements of the Participating TO's Interconnection Handbook, and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

**9.7.5 Requirements for Protection.** In compliance with Good Utility Practice and, if applicable, the requirements of the Participating TO's Interconnection Handbook, the Interconnection Customer shall provide,

install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Participating TO's Transmission System not otherwise isolated by the Participating TO's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Participating TO's Transmission System. Such protective equipment shall include, without limitation, a disconnecting device with fault current-interrupting capability located between the Large Generating Facility and the Participating TO's Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. The Interconnection Customer shall be responsible for protection of the Large Generating Facility and the Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. The Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and the Interconnection Customer's other equipment if conditions on the CAISO Controlled Grid could adversely affect the Large Generating Facility.

**9.7.6 Power Quality.** Neither the Participating TO's nor the Interconnection Customer's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1-1989, in accordance with IEEE Standard 519, any applicable superseding electric industry standard, or any alternative Applicable Reliability Standard or Applicable Reliability Council standard. In the event of a conflict among ANSI Standard C84.1-1989, any applicable superseding electric industry standard, or any alternative Applicable Reliability Standard or Applicable Reliability Council standard, the alternative Applicable Reliability Standard or Applicable Reliability Council standard shall control.

**9.8 Switching and Tagging Rules.** Each Party shall provide the other Parties a copy of its switching and tagging rules that are applicable to the other Parties' activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

**9.9 Use of Interconnection Facilities by Third Parties.**

**9.9.1 Purpose of Interconnection Facilities.** Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the

Participating TO's Transmission System and shall be used for no other purpose.

**9.9.2 Third Party Users.** If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Participating TO's Interconnection Facilities, or any part thereof, the Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by the Participating TO, all third party users, and the Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between the Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by the Participating TO, all third party users, and the Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

**9.10 Disturbance Analysis Data Exchange.** The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or the CAISO Controlled Grid by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

## **ARTICLE 10. MAINTENANCE**

**10.1 Participating TO Obligations.** The Participating TO shall maintain the Participating TO's Transmission System and the Participating TO's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

**10.2 Interconnection Customer Obligations.** The Interconnection Customer shall maintain the Large Generating Facility and the Interconnection Customer's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

**10.3 Coordination.** The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

- 10.4 Secondary Systems.** The Participating TO and Interconnection Customer shall cooperate with the other Parties in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Parties. Each Party shall provide advance notice to the other Parties before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.
- 10.5 Operating and Maintenance Expenses.** Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnection or transmission service to a third party and such third party pays for such expenses, the Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing the Interconnection Customer's Interconnection Facilities; and (2) operation, maintenance, repair and replacement of the Participating TO's Interconnection Facilities.

#### **ARTICLE 11. PERFORMANCE OBLIGATION**

- 11.1 Interconnection Customer's Interconnection Facilities.** The Interconnection Customer shall design, procure, construct, install, own and/or control the Interconnection Customer's Interconnection Facilities described in Appendix A at its sole expense.
- 11.2 Participating TO's Interconnection Facilities.** The Participating TO shall design, procure, construct, install, own and/or control the Participating TO's Interconnection Facilities described in Appendix A at the sole expense of the Interconnection Customer. Unless the Participating TO elects to fund the capital for the Participating TO's Interconnection Facilities, they shall be solely funded by the Interconnection Customer.
- 11.3 Network Upgrades and Distribution Upgrades.** The Participating TO shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless the Participating TO elects to fund the capital for the Distribution Upgrades and Network Upgrades, they shall be funded by the Interconnection Customer, which, for Interconnection Customers processed under the Section 6 of the GIP (in Queue Clusters), shall be in an amount determined pursuant to the methodology set forth in Section 6.5 of the GIP. This specific amount is set forth in Appendix G to this LGIA.

**11.4 Transmission Credits.** No later than thirty (30) Calendar Days prior to the Commercial Operation Date, the Interconnection Customer may make a one-time election by written notice to the CAISO and the Participating TO to receive Congestion Revenue Rights as defined in and as available under the CAISO Tariff at the time of the election in accordance with the CAISO Tariff, in lieu of a refund of the cost of Network Upgrades in accordance with Article 11.4.1.

**11.4.1 Repayment of Amounts Advanced for Network Upgrades.** Upon the Commercial Operation Date, the Interconnection Customer shall be entitled to a repayment, equal to the total amount paid to the Participating TO for the costs of Network Upgrades for which it is responsible, as set forth in Appendix G. Such amount shall include any tax gross-up or other tax-related payments associated with Network Upgrades not refunded to the Interconnection Customer pursuant to Article 5.17.8 or otherwise, and shall be paid to the Interconnection Customer by the Participating TO on a dollar-for-dollar basis either through (1) direct payments made on a levelized basis over the five-year period commencing on the Commercial Operation Date; or (2) any alternative payment schedule that is mutually agreeable to the Interconnection Customer and Participating TO, provided that such amount is paid within five (5) years from the Commercial Operation Date. Notwithstanding the foregoing, if this LGIA terminates within five (5) years from the Commercial Operation Date, the Participating TO's obligation to pay refunds to the Interconnection Customer shall cease as of the date of termination. Any repayment shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. §35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a repayment of such payment. Interest shall continue to accrue on the repayment obligation so long as this LGIA is in effect. The Interconnection Customer may assign such repayment rights to any person.

If the Large Generating Facility fails to achieve Commercial Operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, the Participating TO shall at that time reimburse Interconnection Customer for the amounts advanced for the Network Upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the Generating Facility, if different, is responsible for identifying and demonstrating to the Participating TO the appropriate entity to which reimbursement must be made in order to implement the intent of this reimbursement obligation.

**11.4.2 Special Provisions for Affected Systems.** The Interconnection Customer shall enter into an agreement with the owner of the Affected



System and/or other affected owners of portions of the CAISO Controlled Grid, as applicable, in accordance with the GIP. Such agreement shall specify the terms governing payments to be made by the Interconnection Customer to the owner of the Affected System and/or other affected owners of portions of the CAISO Controlled Grid as well as the repayment by the owner of the Affected System and/or other affected owners of portions of the CAISO Controlled Grid. In no event shall the Participating TO be responsible for the repayment for any facilities that are not part of the Participating TO's Transmission System. In the event the Participating TO is a joint owner with an Affected System or with any other co-owner of a facility affected by the Large Generating Facility, the Participating TO's obligation to reimburse the Interconnection Customer for payments made to address the impacts of the Large Generating Facility on the system shall not exceed the proportionate amount of the cost of any upgrades attributable to the proportion of the jointly-owned facility owned by the Participating TO.

**11.4.3** Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, Congestion Revenue Rights, or transmission credits, that the Interconnection Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain cash reimbursements, merchant transmission Congestion Revenue Rights in accordance with Section 36.11 of the CAISO Tariff, or transmission credits for transmission service that is not associated with the Large Generating Facility.

**11.5 Provision of Interconnection Financial Security.** The Interconnection Customer is obligated to provide all necessary Interconnection Financial Security required under Section 9 of the GIP in a manner acceptable under Section 9 of the GIP. Failure by the Interconnection Customer to timely satisfy the GIP's requirements for the provision of Interconnection Financial Security shall be deemed a Breach of this agreement and a condition of Default of this agreement.

**11.5.1** Notwithstanding any other provision in this agreement for notice of Default and opportunity to cure such Default, the CAISO or the Participating TO shall provide Interconnection Customer with written notice of any Default due to timely failure to post Financial Security, and the Interconnection Customer shall have five (5) Business Days from the date of such notice to cure such Default by posting the required Interconnection Financial Security. If the Interconnection Customer fails to cure the Default, then this Agreement shall be deemed terminated.

**11.6 Interconnection Customer Compensation.** If the CAISO requests or directs the Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power) or 13.5.1 of this LGIA, the CAISO shall compensate the Interconnection Customer in accordance with the CAISO Tariff.

**11.6.1 Interconnection Customer Compensation for Actions During Emergency Condition.** The CAISO shall compensate the Interconnection Customer in accordance with the CAISO Tariff for its provision of real and reactive power and other Emergency Condition services that the Interconnection Customer provides to support the CAISO Controlled Grid during an Emergency Condition in accordance with Article 11.6.

## **ARTICLE 12. INVOICE**

**12.1 General.** The Participating TO shall submit to the Interconnection Customer, on a monthly basis, invoices of amounts due pursuant to this LGIA for the preceding month. Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party. Notwithstanding the foregoing, any invoices between the CAISO and another Party shall be submitted and paid in accordance with the CAISO Tariff.

**12.2 Final Invoice.** As soon as reasonably practicable, but within twelve months after completion of the construction of the Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades, the Participating TO shall provide an invoice of the final cost of the construction of the Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades, and shall set forth such costs in sufficient detail to enable the Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. With respect to costs associated with the Participating TO's Interconnection Facilities and Distribution Upgrades, the Participating TO shall refund to the Interconnection Customer any amount by which the actual payment by the Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice; or, in the event the actual costs of construction exceed the Interconnection Customer's actual payment for estimated costs, then the Interconnection Customer shall pay to the Participating TO any amount by which the actual costs of construction exceed the actual payment by the Interconnection Customer for estimated costs within thirty (30) Calendar Days of the issuance of such final construction invoice. With respect to costs associated with Network Upgrades, the Participating TO shall refund to the Interconnection Customer any amount by which the actual payment by the

Interconnection Customer for estimated costs exceeds the actual costs of construction multiplied by the Interconnection Customer's percentage share of those costs, as set forth in Appendix G to this LGIA within thirty (30) Calendar Days of the issuance of such final construction invoice. In the event the actual costs of construction multiplied by the Interconnection Customer's percentage share of those costs exceed the Interconnection Customer's actual payment for estimated costs, then the Participating TO shall recover such difference through its transmission service rates.

- 12.3 Payment.** Invoices shall be rendered to the Interconnection Customer at the address specified in Appendix F. The Interconnection Customer shall pay, or Participating TO shall refund, the amounts due within thirty (30) Calendar Days of the Interconnection Customer's receipt of the invoice. All payments shall be made in immediately available funds payable to the Interconnection Customer or Participating TO, or by wire transfer to a bank named and account designated by the invoicing Interconnection Customer or Participating TO. Payment of invoices by any Party will not constitute a waiver of any rights or claims any Party may have under this LGIA.
- 12.4 Disputes.** In the event of a billing dispute between the Interconnection Customer and the Participating TO, the Participating TO and the CAISO shall continue to provide Interconnection Service under this LGIA as long as the Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to the Participating TO or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Interconnection Customer fails to meet these two requirements for continuation of service, then the Participating TO may provide notice to the Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accordance with the methodology set forth in FERC's Regulations at 18 C.F.R. § 35.19a(a)(2)(iii). Notwithstanding the foregoing, any billing dispute between the CAISO and another Party shall be resolved in accordance with the provisions of Article 27 of this LGIA.

### ARTICLE 13. EMERGENCIES

- 13.1 [Reserved]**
- 13.2 Obligations.** Each Party shall comply with the Emergency Condition procedures of the CAISO, NERC, the Applicable Reliability Council, Applicable Reliability Standards, Applicable Laws and Regulations, and any emergency procedures set forth in this LGIA.
- 13.3 Notice.** The Participating TO or the CAISO shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that

affects the Participating TO's Interconnection Facilities or Distribution System or the CAISO Controlled Grid, respectively, that may reasonably be expected to affect the Interconnection Customer's operation of the Large Generating Facility or the Interconnection Customer's Interconnection Facilities. The Interconnection Customer shall notify the Participating TO and the CAISO promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or the Interconnection Customer's Interconnection Facilities that may reasonably be expected to affect the CAISO Controlled Grid or the Participating TO's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of the Interconnection Customer's or Participating TO's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice, if requested by a Party, which may be provided by electronic mail or facsimile, or in the case of the CAISO may be publicly posted on the CAISO's internet web site.

**13.4 Immediate Action.** Unless, in the Interconnection Customer's reasonable judgment, immediate action is required, the Interconnection Customer shall obtain the consent of the CAISO and the Participating TO, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or the Interconnection Customer's Interconnection Facilities in response to an Emergency Condition declared by the Participating TO or CAISO or in response to any other emergency condition.

**13.5 CAISO and Participating TO Authority.**

**13.5.1 General.** The CAISO and Participating TO may take whatever actions or inactions, including issuance of dispatch instructions, with regard to the CAISO Controlled Grid or the Participating TO's Interconnection Facilities or Distribution System they deem necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the CAISO Controlled Grid or the Participating TO's Interconnection Facilities or Distribution System, and (iii) limit or prevent damage, and (iv) expedite restoration of service.

The Participating TO and the CAISO shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or the Interconnection Customer's Interconnection Facilities. The Participating TO or the CAISO may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing the Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2;

directing the Interconnection Customer to assist with black start (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and the Interconnection Customer's Interconnection Facilities. Interconnection Customer shall comply with all of the CAISO's and Participating TO's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

**13.5.2 Reduction and Disconnection.** The Participating TO or the CAISO may reduce Interconnection Service or disconnect the Large Generating Facility or the Interconnection Customer's Interconnection Facilities when such reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the CAISO pursuant to the CAISO Tariff. When the CAISO or Participating TO can schedule the reduction or disconnection in advance, the CAISO or Participating TO shall notify the Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. The CAISO or Participating TO shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Interconnection Customer and the CAISO and Participating TO. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the CAISO Controlled Grid to their normal operating state as soon as practicable consistent with Good Utility Practice.

**13.6 Interconnection Customer Authority.** Consistent with Good Utility Practice, this LGIA, and the CAISO Tariff, the Interconnection Customer may take actions or inactions with regard to the Large Generating Facility or the Interconnection Customer's Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or the Interconnection Customer's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the CAISO Controlled Grid and the Participating TO's Interconnection Facilities. The CAISO and Participating TO shall use Reasonable Efforts to assist Interconnection Customer in such actions.

**13.7 Limited Liability.** Except as otherwise provided in Article 11.6.1 of this LGIA, no Party shall be liable to any other Party for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

## **ARTICLE 14. REGULATORY REQUIREMENTS AND GOVERNING LAW**

- 14.1 Regulatory Requirements.** Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require the Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978, or the Energy Policy Act of 2005.
- 14.2 Governing Law.**
- 14.2.1** The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.
- 14.2.2** This LGIA is subject to all Applicable Laws and Regulations.
- 14.2.3** Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

## **ARTICLE 15. NOTICES**

- 15.1 General.** Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by a Party to another and any instrument required or permitted to be tendered or delivered by a Party in writing to another shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.
- A Party must update the information in Appendix F as information changes. A Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change. Such changes shall not constitute an amendment to this LGIA.
- 15.2 Billings and Payments.** Billings and payments shall be sent to the addresses set out in Appendix F.

- 15.3 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another and not required by this LGIA to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out in Appendix F.
- 15.4 Operations and Maintenance Notice.** Each Party shall notify the other Parties in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

## **ARTICLE 16. FORCE MAJEURE**

### **16.1 Force Majeure.**

**16.1.1** Economic hardship is not considered a Force Majeure event.

**16.1.2** No Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

## **ARTICLE 17. DEFAULT**

### **17.1 Default.**

**17.1.1 General.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act or omission of the other Party. Upon a Breach, the affected non-Breaching Party(ies) shall give written notice of such Breach to the Breaching Party. Except as provided in Article 17.1.2 and in Article 11.5.1, the Breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar

Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

**17.1.2 Right to Terminate.** If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the affected non-Breaching Party(ies) shall have the right to declare a Default and terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not such Party(ies) terminates this LGIA, to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this LGIA.

## **ARTICLE 18. INDEMNITY, CONSEQUENTIAL DAMAGES AND INSURANCE**

**18.1 Indemnity.** Each Party shall at all times indemnify, defend, and hold the other Parties harmless from, any and all Losses arising out of or resulting from another Party's action or inactions of its obligations under this LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

**18.1.1 Indemnified Party.** If an Indemnified Party is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

**18.1.2 Indemnifying Party.** If an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article 18, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

**18.1.3 Indemnity Procedures.** Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action



include one or more Indemnified Parties and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it and/or other Indemnified Parties which are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party or Indemnified Parties having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest between the Indemnified Party and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed.

**18.2 Consequential Damages.** Other than the liquidated damages heretofore described in Article 5.3, in no event shall any Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

**18.3 Insurance.** Each Party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Parties, the following minimum insurance coverages, with insurers rated no less than A- (with a minimum size rating of VII) by Bests' Insurance Guide and Key Ratings and authorized to do business in the state where the Point of Interconnection is located, except in the case of the CAISO, the State of California:

**18.3.1** Employer's Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the

state in which the Point of Interconnection is located, except in the case of the CAISO, the State of California.

- 18.3.2** Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
- 18.3.3** Business Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- 18.3.4** Excess Public Liability Insurance over and above the Employer's Liability Commercial General Liability and Business Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars (\$20,000,000) per occurrence/Twenty Million Dollars (\$20,000,000) aggregate.
- 18.3.5** The Commercial General Liability Insurance, Business Automobile Insurance and Excess Public Liability Insurance policies shall name the other Parties, their parents, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) Calendar Days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.
- 18.3.6** The Commercial General Liability Insurance, Business Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would

have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

- 18.3.7** The Commercial General Liability Insurance, Business Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.
- 18.3.8** The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.
- 18.3.9** Within ten (10) Calendar Days following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) Calendar Days thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.
- 18.3.10** Notwithstanding the foregoing, each Party may self-insure to meet the minimum insurance requirements of Articles 18.3.2 through 18.3.8 to the extent it maintains a self-insurance program; provided that, such Party's senior unsecured debt or issuer rating is BBB-, or better, as rated by Standard & Poor's and that its self-insurance program meets the minimum insurance requirements of Articles 18.3.2 through 18.3.8. For any period of time that a Party's senior unsecured debt rating and issuer rating are both unrated by Standard & Poor's or are both rated at less than BBB- by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.2 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it shall notify the other Parties that it meets the requirements to self-insure and that its self-insurance program meets the minimum insurance requirements in a manner consistent with that specified in Article 18.3.9.
- 18.3.11** The Parties agree to report to each other 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 LGIA.

## **ARTICLE 19. ASSIGNMENT**

- 19.1 Assignment.** This LGIA may be assigned by a Party only with the written consent of the other Parties; provided that a Party may assign this LGIA without

the consent of the other Parties to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that the Interconnection Customer shall have the right to assign this LGIA, without the consent of the CAISO or Participating TO, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that the Interconnection Customer will promptly notify the CAISO and Participating TO of any such assignment. Any financing arrangement entered into by the Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the CAISO and Participating TO of the date and particulars of any such exercise of assignment right(s), including providing the CAISO and Participating TO with proof that it meets the requirements of Articles 11.5 and 18.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

#### **ARTICLE 20. SEVERABILITY**

- 20.1 Severability.** If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision, agreement or covenant of this LGIA; provided that if the Interconnection Customer (or any third party, but only if such third party is not acting at the direction of the Participating TO or CAISO) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of the provisions of Article 5.1.2 or 5.1.4 shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

#### **ARTICLE 21. COMPARABILITY**

- 21.1 Comparability.** The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

#### **ARTICLE 22. CONFIDENTIALITY**

- 22.1 Confidentiality.** Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by any of the Parties to the other Parties prior to the execution of this LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Parties receiving the information that the information is confidential.

If requested by any Party, the other Parties shall provide in writing, the basis for asserting that the information referred to in this Article 22 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

**22.1.1 Term.** During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

**22.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of this LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Parties that it no longer is confidential.

**22.1.3 Release of Confidential Information.** No Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, Affiliates (limited by the Standards of Conduct requirements set forth in Part 358 of FERC's Regulations, 18 C.F.R. 358), subcontractors, or to parties who may be or considering providing financing to or equity participation with the Interconnection Customer, or to potential purchasers or assignees of the Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a

Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

**22.1.4 Rights.** Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Parties. The disclosure by each Party to the other Parties of Confidential Information shall not be deemed a waiver by a Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

**22.1.5 No Warranties.** The mere fact that a Party has provided Confidential Information does not constitute a warranty or representation as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Parties nor to enter into any further agreements or proceed with any other relationship or joint venture.

**22.1.6 Standard of Care.** Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Parties under this LGIA or its regulatory requirements.

**22.1.7 Order of Disclosure.** If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of this LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

**22.1.8 Termination of Agreement.** Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

**22.1.9 Remedies.** The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

**22.1.10 Disclosure to FERC, its Staff, or a State.** Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Parties to this LGIA prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

**22.1.11** Subject to the exception in Article 22.1.10, Confidential Information shall not be disclosed by the other Parties to any person not employed or retained by the other Parties, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Parties, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Balancing Authority including disclosing the Confidential Information to an RTO or ISO or to a regional or national

reliability organization. The Party asserting confidentiality shall notify the other Parties in writing of the information it claims is confidential. Prior to any disclosures of another Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

### **ARTICLE 23. ENVIRONMENTAL RELEASES**

- 23.1** Each Party shall notify the other Parties, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Parties. The notifying Party shall: (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Parties copies of any publicly available reports filed with any Governmental Authorities addressing such events.

### **ARTICLE 24. INFORMATION REQUIREMENTS**

- 24.1 Information Acquisition.** The Participating TO and the Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.
- 24.2 Information Submission by Participating TO.** The initial information submission by the Participating TO shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include the Participating TO's Transmission System information necessary to allow the Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise agreed to by the Participating TO and the Interconnection Customer. On a monthly basis the Participating TO shall provide the Interconnection Customer and the CAISO a status report on the construction and installation of the Participating TO's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.



**24.3 Updated Information Submission by Interconnection Customer.** The updated information submission by the Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. The Interconnection Customer shall submit a completed copy of the Electric Generating Unit data requirements contained in Appendix 1 to the GIP. It shall also include any additional information provided to the Participating TO and the CAISO for the Interconnection Studies. Information in this submission shall be the most current Electric Generating Unit design or expected performance data. Information submitted for stability models shall be compatible with the Participating TO and CAISO standard models. If there is no compatible model, the Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Interconnection Customer's data is materially different from what was originally provided to the Participating TO and the CAISO for the Interconnection Studies, then the Participating TO and the CAISO will conduct appropriate studies pursuant to the GIP to determine the impact on the Participating TO's Transmission System and affected portions of the CAISO Controlled Grid based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed and all other requirements of this LGIA are satisfied.

**24.4 Information Supplementation.** Prior to the Trial Operation date, the Parties shall supplement their information submissions described above in this Article 24 with any and all "as-built" Electric Generating Unit information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Electric Generating Unit as required by Good Utility Practice such as an open circuit "step voltage" test on the Electric Generating Unit to verify proper operation of the Electric Generating Unit's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Electric Generating Unit at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent (5 percent) change in Electric Generating Unit terminal voltage initiated by a change in the voltage regulators reference voltage. The Interconnection Customer shall provide validated test recordings showing the responses of Electric Generating Unit terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Electric Generating Unit's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Electric Generating Unit terminal or field voltages is provided. Electric Generating Unit testing shall be conducted and results provided to the Participating TO and the CAISO for each individual Electric Generating Unit in a station.

Subsequent to the Commercial Operation Date, the Interconnection Customer shall provide the Participating TO and the CAISO any information changes due to equipment replacement, repair, or adjustment. The Participating TO shall provide the Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Participating TO-owned substation that may affect the Interconnection Customer's Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information pursuant to Article 5.19.

## **ARTICLE 25. INFORMATION ACCESS AND AUDIT RIGHTS**

- 25.1 Information Access.** Each Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and (ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA. Nothing in this Article 25 shall obligate the CAISO to make available to a Party any third party information in its possession or control if making such third party information available would violate a CAISO Tariff restriction on the use or disclosure of such third party information.
- 25.2 Reporting of Non-Force Majeure Events.** Each Party (the "notifying Party") shall notify the other Parties when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.
- 25.3 Audit Rights.** Subject to the requirements of confidentiality under Article 22 of this LGIA, the Parties' audit rights shall include audits of a Party's costs pertaining to such Party's performance or satisfaction of obligations owed to the other Party under this LGIA, calculation of invoiced amounts, the CAISO's efforts to allocate responsibility for the provision of reactive support to the CAISO Controlled Grid, the CAISO's efforts to allocate responsibility for interruption or reduction of generation on the CAISO Controlled Grid, and each such Party's actions in an Emergency Condition.

**25.3.1** The Interconnection Customer and the Participating TO shall each have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either such Party's performance or either such Party's satisfaction of obligations owed to the other Party under this LGIA. Subject to Article 25.3.2, any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each such Party's performance and satisfaction of obligations under this LGIA. Each such Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

**25.3.2** Notwithstanding anything to the contrary in Article 25.3, each Party's rights to audit the CAISO's accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff.

#### **25.4 Audit Rights Periods.**

##### **25.4.1 Audit Rights Period for Construction-Related Accounts and Records.**

Accounts and records related to the design, engineering, procurement, and construction of Participating TO's Interconnection Facilities, Network Upgrades, and Distribution Upgrades constructed by the Participating TO shall be subject to audit for a period of twenty-four months following the Participating TO's issuance of a final invoice in accordance with Article 12.2. Accounts and records related to the design, engineering, procurement, and construction of Participating TO's Interconnection Facilities and/or Stand Alone Network Upgrades constructed by the Interconnection Customer shall be subject to audit and verification by the Participating TO and the CAISO for a period of twenty-four months following the Interconnection Customer's issuance of a final invoice in accordance with Article 5.2(8).

**25.4.2 Audit Rights Period for All Other Accounts and Records.** Accounts and records related to a Party's performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought; provided that each Party's rights to audit the CAISO's accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff.

**25.5 Audit Results.** If an audit by the Interconnection Customer or the Participating TO determines that an overpayment or an underpayment has occurred with

respect to the other Party, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which supports such determination. The Party that is owed payment shall render an invoice to the other Party and such invoice shall be paid pursuant to Article 12 hereof.

**25.5.1** Notwithstanding anything to the contrary in Article 25.5, the Interconnection Customer's and Participating TO's rights to audit the CAISO's accounts and records shall be as set forth in Section 22.1 of the CAISO Tariff, and the CAISO's process for remedying an overpayment or underpayment shall be as set forth in the CAISO Tariff.

## **ARTICLE 26. SUBCONTRACTORS**

**26.1 General.** Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

**26.2 Responsibility of Principal.** The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Parties for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the CAISO or Participating TO be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

**26.3 No Limitation by Insurance.** The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

## **ARTICLE 27. DISPUTES**

All disputes arising out of or in connection with this LGIA whereby relief is sought by or from the CAISO shall be settled in accordance with the provisions of Article 13 of the CAISO Tariff, except that references to the CAISO Tariff in such Article 13 of the CAISO Tariff shall be read as references to this LGIA. Disputes arising out of or in connection with this LGIA not subject to provisions of Article 13 of the CAISO Tariff shall be resolved as follows:

**27.1 Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the

"disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

- 27.2 External Arbitration Procedures.** Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.
- 27.3 Arbitration Decisions.** Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator(s) must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.
- 27.4 Costs.** Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the

arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

## **ARTICLE 28. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**28.1 General.** Each Party makes the following representations, warranties and covenants:

- 28.1.1 Good Standing.** Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LGIA.
- 28.1.2 Authority.** Such Party has the right, power and authority to enter into this LGIA, to become a Party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).
- 28.1.3 No Conflict.** The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.
- 28.1.4 Consent and Approval.** Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

## **ARTICLE 29. [RESERVED]**

## ARTICLE 30. MISCELLANEOUS

- 30.1 Binding Effect.** This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 30.2 Conflicts.** In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.
- 30.3 Rules of Interpretation.** This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the GIP or such Appendix to the GIP, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".
- 30.4 Entire Agreement.** This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement among the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between or among the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, any Party's compliance with its obligations under this LGIA.
- 30.5 No Third Party Beneficiaries.** This LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations

herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

- 30.6 Waiver.** The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LGIA. Termination or Default of this LGIA for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Participating TO. Any waiver of this LGIA shall, if requested, be provided in writing.

- 30.7 Headings.** The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

- 30.8 Multiple Counterparts.** This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

- 30.9 Amendment.** The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

- 30.10 Modification by the Parties.** The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

- 30.11 Reservation of Rights.** The CAISO and Participating TO shall each have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder with respect to the following Articles and Appendices of this LGIA and with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation covered by these Articles and Appendices:

Recitals, 1, 2.1, 2.2, 2.3, 2.4, 2.6, 3.1, 3.3, 4.1, 4.2, 4.3, 4.4, 5 preamble, 5.4, 5.7, 5.8, 5.9, 5.12, 5.13, 5.18, 5.19.1, 7.1, 7.2, 8, 9.1, 9.2, 9.3, 9.5, 9.6, 9.7, 9.8, 9.10, 10.3, 11.4, 12.1, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24.3, 24.4, 25.1, 25.2, 25.3 (excluding subparts), 25.4.2, 26, 28, 29,



30, Appendix D, Appendix F, Appendix G, and any other Article not reserved exclusively to the Participating TO or the CAISO below.

The Participating TO shall have the exclusive right to make a unilateral filing with FERC to modify this LGIA pursuant to section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder with respect to the following Articles and Appendices of this LGIA and with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation covered by these Articles and Appendices:

2.5, 5.1, 5.2, 5.3, 5.5, 5.6, 5.10, 5.11, 5.14, 5.15, 5.16, 5.17, 5.19 (excluding 5.19.1), 6, 7.3, 9.4, 9.9, 10.1, 10.2, 10.4, 10.5, 11.1, 11.2, 11.3, 11.5, 12.2, 12.3, 12.4, 24.1, 24.2, 25.3.1, 25.4.1, 25.5 (excluding 25.5.1), 27 (excluding preamble), Appendix A, Appendix B, Appendix C, and Appendix E.

The CAISO shall have the exclusive right to make a unilateral filing with FERC to modify this LGIA pursuant to section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder with respect to the following Articles of this LGIA and with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation covered by these Articles:

3.2, 4.5, 11.6, 25.3.2, 25.5.1, and 27 preamble.

The Interconnection Customer, the CAISO, and the Participating TO shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by another Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

- 30.12 No Partnership.** This LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership among the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, another Party.
- 30.13 Joint and Several Obligations.** Except as otherwise provided in this LGIA, the obligations of the CAISO, the Participating TO, and the Interconnection Customer are several, and are neither joint nor joint and several.

**IN WITNESS WHEREOF**, the Parties have executed this LGIA in multiple originals, each of which shall constitute and be an original effective agreement among the Parties.

**NextEra Desert Center Blythe, LLC**

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

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

Date: \_\_\_\_\_

**Southern California Edison Company**

By: David L. Mead \_\_\_\_\_

Title: Senior Vice President \_\_\_\_\_

Date: \_\_\_\_\_

**California Independent System Operator Corporation**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this LGIA in multiple originals, each of which shall constitute and be an original effective agreement among the Parties.

**NextEra Desert Center Blythe, LLC**

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

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

Date: \_\_\_\_\_

**Southern California Edison Company**

By: David L. Mead 

Title: Senior Vice President

Date: 8-12-11

**California Independent System Operator Corporation**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this LGIA in multiple originals, each of which shall constitute and be an original effective agreement among the Parties.

**NextEra Desert Center Blythe, LLC**

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

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

Date: \_\_\_\_\_

**Southern California Edison Company**

By: David L. Mead \_\_\_\_\_

Title: Senior Vice President \_\_\_\_\_

Date: \_\_\_\_\_

**California Independent System Operator Corporation**

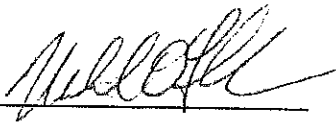
By:  \_\_\_\_\_

Title: KEITH E. CASEY, PH.D., VICE PRESIDENT  
MARKET & INFRASTRUCTURE DEVELOPMENT \_\_\_\_\_

Date: 8/12/11 \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this LGIA in multiple originals, each of which shall constitute and be an original effective agreement among the Parties.

**NextEra Desert Center Blythe, LLC**

By: Michael O'Sullivan   
Title: Vice President  
Date: August 12, 2011

**Southern California Edison Company**

By: David L. Mead  
Title: Senior Vice President  
Date: \_\_\_\_\_

**California Independent System Operator Corporation**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **Appendices to LGIA**

- Appendix A Interconnection Facilities, Network Upgrades and Distribution Upgrades
- Appendix B Milestones
- Appendix C Interconnection Details
- Appendix D Security Arrangements Details
- Appendix E Commercial Operation Date
- Appendix F Addresses for Delivery of Notices and Billings
- Appendix G Interconnection Customer's Proportional Share of Costs of Network Upgrades for Applicable Project Group
- Appendix H Interconnection Requirements for an Asynchronous Generating Facility

**Appendix A  
To LGIA**

**Interconnection Facilities, Network Upgrades and Distribution Upgrades**

**Recitals to Appendix A**

- A. The Participating TO's Interconnection Facilities, Network Upgrades and Distribution Upgrades described herein are based on the Participating TO's preliminary engineering and design and are subject to modification to reflect the actual facilities that will be constructed and installed following the Participating TO's final engineering and design, identification of field conditions, and compliance with applicable environmental and permitting requirements.
  
- B. The Interconnection Customer proposed, in its Interconnection Request, dated May 24, 2007 to construct a solar thermal and photovoltaic Generating Facility with a maximum net output of 500 MW. The entire Generating Facility, known as the "Genesis McCoy Solar Project," is comprised of the (i) Genesis Station, a 250 MW solar thermal facility consisting of two (2) 125 MW Electric Generating Units, and (ii) McCoy Station, a 250 MW photovoltaic facility. For the purpose of this LGIA, the McCoy Station will be deemed to be constructed as two (2) Electric Generating Units, each consisting of approximately 125 MW. The Interconnection Request is being processed along with several other Interconnection Requests, as part of the CAISO's "Eastern Bulk System Cluster" ("Cluster").
  
- C. The Phase II Interconnection Study applicable to the Cluster determined that the Participating TO's Delivery Network Upgrades cannot be completed to meet the Full Capacity Deliverability Status requests of the Cluster until 2017. In response to this information, the CAISO, the Participating TO, and the Interconnection Customer have agreed to permit the Interconnection Customer to construct the entire Generating Facility as a Phased Generating Facility in two sequences, with the First Sequence, consisting of Electric Generating Units 1 & 2 ("First Sequence") and the Second Sequence, consisting of Electric Generating Units 3 & 4 ("Second Sequence"). The Interconnection Customer has proposed that the sequencing of the construction of the Phased Generating Facility take place in a manner that matches the construction of the anticipated transmission upgrades and the corresponding availability of transmission necessary for each sequence and to include within this LGIA provisions for Partial Termination as described in Article 2.4.4 of this LGIA. As set forth below, the First Sequence consisting of Electric Generating Units 1 & 2 of the Phased Generating Facility is scheduled to achieve Commercial Operation concurrent with the Participating TO's Reliability Network Upgrades and the Second Sequence consisting of Electric Generating Units 3 & 4 is scheduled to achieve Commercial Operation concurrent with the in-service date of Participating TO's Delivery Network Upgrades. The Interconnection Customer understands that Full Capacity Deliverability Status will

be determined pursuant to applicable CAISO procedures and that such status is not assured for the First Sequence prior to completion of all the facilities contemplated in this LGIA in 2017. This Appendix A describes separately the Interconnection Facilities, and Network Upgrades where applicable, for the First Sequence and the Second Sequence. Similarly, separate milestones are set forth for both the Phased Generating Facility and the transmission activities for each sequence based upon the results of the Phase II Interconnection Study.

### **Operative Provisions of Appendix A**

#### **1. Interconnection Facilities:**

(a) **Interconnection Customer's Interconnection Facilities:** The Interconnection Customer shall:

(i) First Sequence designated by Interconnection Customer as the Genesis Station:

1. Construct a new, approximate 14 mile, 220kV generation tie-line from the Genesis Station to Participating TO's Colorado River Substation comprised of 1B-954 kcmil ACSR conductor. This generation tie-line will initially be called the Colorado River-Genesis 220kV Transmission Line and will later be reconfigured as described below in the Second Sequence identified as McCoy Station under Section 1(a)(ii).
2. Install optical ground wire ("OPGW") and associated underground vaults, risers, conduits, panels, and cable on the Colorado River - Genesis 220kV Transmission Line to provide the telecommunication path required to support the line protection scheme and Remote Terminal Units ("RTU"), and one of the two diverse telecommunications paths required for the SPS. Interconnection Customer shall install, own, operate and maintain such telecommunications path and equipment, with the exception of the terminal equipment at Colorado River Substation, and initially at the Genesis Station (until such time as the Genesis McCoy 220kV Switchyard is constructed), which will be installed, owned, operated and maintained by the Participating TO.
3. Install new All Dielectric Self Supported ("ADSS") fiber optic cable from Participating TO's Colorado River Substation to the Genesis Station, and associated underground vaults, risers, conduits, panels and cable to terminate the ADSS, to provide the second of the two diverse telecommunications paths required for the SPS. The telecommunications equipment will be specified by the Participating TO so as to match telecommunications equipment used by the Participating TO at Colorado River Substation and at the Genesis Station. Interconnection Customer shall install, own, operate and maintain such telecommunications path and equipment, with the exception of the terminal equipment at Colorado River Substation, and



initially at the Genesis Station (until such time as the Genesis McCoy 220kV Switchyard is constructed), which will be installed, owned, operated and maintained by the Participating TO. If the Interconnection Customer chooses to expedite the construction of the Genesis McCoy 220kV Switchyard as part of the initial configuration of the Genesis Station as described below in Section 1(a)(ii), this second diverse telecommunications path between Participating TO's Colorado River Substation and the Genesis Station will still be required based on the anticipated SPS design, unless, following execution of this LGIA, the Participating TO, CAISO and Interconnection Customer mutually agree on an acceptable alternative that accomplishes the generation curtailment otherwise provided by the anticipated SPS design.

- a. Allow Participating TO to review Interconnection Customer's fiber-optic cable design and perform inspection to ensure compatibility with Participating TO's terminal equipment and protection engineering requirements for diverse path communication routing.
  - b. Allow Participating TO to perform acceptance testing of fiber-optic cables and give the Participating TO the right to request and/or to perform correction of installation deficiencies as determined by the Participating TO.
4. Make available adequate space and facilities necessary for the installation of the Participating TO's RTU to be located at the Genesis Station.
  5. Install all required CAISO approved metering equipment at the Genesis Station.
  6. Install all required revenue metering equipment (voltage and current transformers) at the Genesis Station to meter the Generating Facility retail load as specified by Participating TO.
  7. Install 220kV transmission line protection and SPS relays at the Genesis Station as specified by the Participating TO, expected to include the following:
    - a. one (1) GE L90 current differential relay with telecommunications channel to Colorado River Substation via the OPGW on the Colorado River-Genesis 220kV Transmission Line
    - b. one (1) SEL 311C current differential relay; no telecommunications channels required
    - c. two (2) N60 relays (one for SPS A and SPS B) to trip the generator breakers
    - d. one (1) SEL-2407 satellite synchronized clock
  8. Perform all required functions to obtain land easements or land acquisition, obtain licensing and permits, and perform required environmental activities for the installation of the telecommunications between the Genesis Station and Participating TO's Colorado River Substation, and for the Participating TO's portion of the Colorado River-Genesis 220kV Transmission Line.

(ii) Second Sequence designated by Interconnection Customer as the McCoy Station:

1. Construct a new Genesis McCoy 220kV Switchyard and a new, approximate 13 mile, 220kV generation tie-line from the McCoy Station to the new Genesis McCoy 220kV Switchyard comprised of 1B-954 kcmil ACSR conductor. Loop the Colorado River-Genesis 220kV Transmission Line into the Genesis McCoy 220kV Switchyard. Following completion of these Second Sequence facilities, the transmission facilities of the Genesis McCoy Solar Project will be comprised of three lines, including the Genesis McCoy-Genesis Station 220kV Transmission Line, the Genesis McCoy-McCoy Station 220kV Transmission Line, and the Colorado River-Genesis McCoy 220kV Transmission Line, collectively referred to as the "Gen-Tie Lines". The Interconnection Customer may choose to expedite the construction of the Genesis McCoy 220kV Switchyard ahead of this Second Sequence as part of the initial configuration.
2. Install optical ground wire ("OPGW") and associated underground vaults, risers, conduits, panels, and cable on the Genesis McCoy-McCoy Station 220kV Transmission Line to provide the telecommunication path required to support the line protection scheme and Remote Terminal Units ("RTU"), and one of the two required telecommunications paths required for the SPS. Interconnection Customer shall install, own, operate and maintain such telecommunications path and equipment, with the exception of the terminal equipment at Genesis McCoy 220kV Switchyard, which will be installed, owned, operated and maintained by the Participating TO.
3. If not previously installed as part of the First Sequence, install new All Dielectric Self Supported ("ADSS") fiber optic cable from Participating TO's Colorado River Substation to the Genesis McCoy 220kV Switchyard, and associated underground vaults, risers, conduits, panels and cable to terminate the ADSS, to provide the second of the two diverse telecommunications paths required for the SPS. The telecommunications equipment will be specified by the Participating TO so as to match telecommunications equipment used by the Participating TO at Colorado River Substation. Interconnection Customer shall install, own, operate and maintain such telecommunications path and equipment, with the exception of the terminal equipment at Colorado River Substation and the Genesis McCoy 220kV Switchyard, which will be installed, owned, operated and maintained by the Participating TO. The Interconnection Customer understands and acknowledges that curtailment of McCoy Station output will be applied at the Genesis McCoy 220kV Switchyard and not at the McCoy Station if the Interconnection Customer elects not to extend the second diverse telecommunications path from the Genesis McCoy 220kV Switchyard to the McCoy Station.

- a. Allow Participating TO to review Interconnection Customer's fiber-optic cable design and perform inspection to ensure compatibility with Participating TO's terminal equipment and protection engineering requirements for diverse path communication routing.
  - b. Allow Participating TO to perform acceptance testing of fiber-optic cables and give the Participating TO the right to request and/or to perform correction of installation deficiencies as determined by the Participating TO.
4. Make available adequate space and facilities necessary for the installation of the Participating TO's RTUs to be located at the McCoy Station and the Genesis McCoy 220kV Switchyard.
  5. Install all required CAISO approved metering equipment at the McCoy Station.
  6. Install all required revenue metering equipment (voltage and current transformers) at the McCoy Station to meter the Generating Facility retail load as specified by Participating TO.
  7. Install 220kV transmission line protection and SPS relays at the McCoy Station as specified by the Participating TO, expected to include the following:
    - a. one (1) GE L90 current differential relay with telecommunications channel to Colorado River Substation via the OPGW on the Genesis McCoy-McCoy Station 220kV Transmission Line
    - b. one (1) SEL 311C current differential relay; no telecommunications channels required
    - c. two (2) N60 relays (one for SPS A and one for SPS B if required) to trip the generator breakers
    - d. one (1) SEL-2407 satellite synchronized clock
  8. Perform all required functions to obtain land easements or land acquisition, obtain licensing and permits, and perform required environmental activities for the installation of the telecommunications between the McCoy Station and the Genesis McCoy 220kV Switchyard, and between the Genesis McCoy 220kV Switchyard and Participating TO's Colorado River Substation.

**(b) Participating TO's Interconnection Facilities:** The Participating TO shall:

- (i) Colorado River-Genesis McCoy 220 kV Transmission Line (installation of the following equipment to be coordinated with the construction of Interconnection Customer's First Sequence - Genesis Station Interconnection Facilities):
  1. Install one 220 kV dead-end structure, two spans of conductors and OPGW and twelve dead end insulator / hardware assemblies between the last Interconnection Customer-owned structure on the Colorado River-Genesis 220kV Transmission Line (the Colorado River-Genesis McCoy 220kV Transmission Line following construction of the Genesis McCoy

220kV Switchyard described above in Section 1(a)(ii)1 and the substation dead-end rack at the Colorado River 220 kV switchyard.

- (ii) Colorado River Substation (installation of the following equipment to be coordinated with the construction of Interconnection Customer's First Sequence-Genesis Station Interconnection Facilities) :
  - 1. Install the following facilities to terminate the new Colorado River-Genesis 220kV Transmission Line (the Colorado River-Genesis McCoy 220kV Transmission Line following construction of the Genesis McCoy 220kV Switchyard described above in Section 1(a)(ii)1 at a dedicated double breaker position:
    - a. one (1) dead-end structure (60ft. high x 50ft. wide)
    - b. three (3) 220kV coupling capacitor voltage transformers
    - c. one (1) GE L90 current differential relay with telecommunications channel to the Generating Facility via the OPGW on the Gen-Tie Lines
    - d. one (1) SEL 311C current differential relay. No telecommunication channels required
  - 2. Telecommunications- Install all required light-wave, channel and related terminal equipment to support the Genesis McCoy Solar Project Gen-Tie Lines protection, SPS, SCADA, and Participating TO's applicable voice and data requirements.
- (iii) Genesis McCoy 220kV Switchyard (installation of the following equipment to be coordinated with the construction of Interconnection Customer's Second Sequence-McCoy Station Interconnection Facilities or with the First Sequence-Genesis Station if the Interconnection Customer chooses to expedite this switchyard):
  - 1. Power System Control- Install one (1) RTU at the Interconnection Customer-owned Genesis McCoy 220kV Switchyard to transmit circuit breaker status and project net MW and MVAR. Notwithstanding that the RTU will be located on Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate and maintain the RTU as part of the Participating TO's Interconnection Facilities.
  - 2. Telecommunications- Install all required light-wave, channel and related terminal equipment to support the Genesis McCoy Solar Project Gen-Tie Lines protection and SPS. Notwithstanding that the telecommunications terminal equipment will be located on the Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate and maintain the telecommunications terminal equipment as part of the Participating TO's Interconnection Facilities.
- (iv) Genesis McCoy Solar Project:
  - 1. Installation of the following equipment to be coordinated with the construction of Interconnection Customer's Interconnection Facilities for the First Sequence-Genesis Station:

- a. Power System Control- Install one (1) RTU at Genesis Station to transmit generator unit gross MW and MVAR, plant auxiliary load, generator status, generator circuit breaker status, generator terminal voltage, and project net MW and MVAR. Notwithstanding that the RTUs will be located on Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate and maintain the RTUs as part of the Participating TO's Interconnection Facilities.
  - b. Metering Services- Install a metering cabinet and revenue meters at Genesis Station required to meter the retail load at the Generating Facility. Notwithstanding that the metering will be located on the Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate and maintain the metering as part of the Participating TO's Interconnection Facilities.
  - c. Telecommunications- Install all required light-wave, channel and related terminal equipment to support the Colorado River-Genesis 220kV Transmission Line protection and SPS. Notwithstanding that the telecommunications terminal equipment will be located on the Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate and maintain the telecommunications terminal equipment as part of the Participating TO's Interconnection Facilities. Such terminal equipment will be removed from the Genesis Station concurrent with the installation of Participating TO's required channel and terminal equipment at the Genesis McCoy 220kV Switchyard.
2. Installation of the following equipment to be coordinated with the construction of Interconnection Customer's Second Sequence-McCoy Station:
- a. Power System Control- Install one (1) RTU at the McCoy Station to transmit generator unit gross MW and MVAR, plant auxiliary load, generator status, generator circuit breaker status, generator terminal voltage, and project net MW and MVAR. Notwithstanding that the RTUs will be located on Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate and maintain the RTUs as part of the Participating TO's Interconnection Facilities.
  - b. Metering Services- Install a metering cabinet and revenue meters at the McCoy Station required to meter the retail load at the Generating Facility. Notwithstanding that the metering will be located on the Interconnection Customer's side of the Point of Change of Ownership, Participating TO shall own, operate

and maintain the metering as part of the Participating TO's Interconnection Facilities.

(v) **Real Properties, Transmission Project Licensing, and Environmental Health and Safety:**

1. Perform any required functions to obtain land easements or land acquisition, obtain licensing and permits, and perform any required environmental activities in addition to those performed by the Interconnection Customer pursuant to Appendix C Section 3(f) of this LGIA, for the Participating TO's portion of the Colorado River-Genesis McCoy 220 kV Transmission Line (initially the Colorado River-Genesis 220kV Transmission Line).

**2. Network Upgrades:**

(a) **Stand Alone Network Upgrades:** None.

(b) **Other Network Upgrades:**

(i) **Participating TO's Reliability Network Upgrades:** The Participating TO shall:

1. Terminate the Colorado River-Genesis McCoy 220kV Transmission Line (initially the Colorado River-Genesis 220kV Transmission Line) at Colorado River Substation:
  - a. Colorado River Substation
    - i. Install the following equipment for a dedicated 220kV double breaker line position on a breaker-and-a-half configuration to terminate the Colorado River-Genesis McCoy 220kV Transmission Line:
      1. two (2) 220kV 3000A - 50kA circuit breakers
      2. four (4) 220kV 3000A – 80kA horizontal-mounted group operated disconnect switches
      3. one (1) grounding switch attachment
      4. eighteen (18) 220kV bus supports with associated steel pedestals
      5. 2B-1590 kcmil ACSR conductors
    - ii. Power System Control – Expand the RTU at Colorado River Substation to install additional points required for the Colorado River-Genesis McCoy 220kV Line
2. Loop the Colorado River-Devers No.2 500kV Transmission Line into Red Bluff Substation:
  - a. Colorado River-Devers No.2 500kV Transmission Line – Loop the line into Red Bluff Substation to form the new Devers-Red Bluff No.

- 2 and Colorado River-Red Bluff No. 2 500kV Transmission Lines.  
This work requires the following:
- i. install approximately one circuit mile of 2B-2156 kcmil ACSR conductors and OPGW
  - ii. install four (4) dead-end 500kV lattice steel structures
  - iii. install thirty (30) insulator/hardware assemblies
- b. Red Bluff 500/220kV Substation
- i. Install two (2) new double breaker line positions within the 500kV Switchyard to terminate the new Colorado River No.2 and Devers No.2 500kV Transmission Lines
  - ii. Install the following protection relays in the control room
    1. four (4) GE C60 breaker management relays
    2. two (2) GE D60 distance relays (digital communication channel)
    3. two (2) GE L90 current differential relay (digital communication channel)
    4. two (2) SEL-421 current differential relay with RFL 9780 on Power Line Carrier Current ("PLCC")
    5. two (2) additional RFL 9780 direct transfer trip on PLCC
    6. two (2) RFL 9745 direct transfer trip on PLCC
3. Colorado River Substation Expansion – No. 1 AA-Bank: Expand the substation, presently configured as a 500kV switchyard, to a 1120MVA 500/220kV substation by installing one 1120MVA, 500/220kV transformer bank with corresponding 500kV and 220kV bank positions and installing a new 220kV switchyard.
- a. 500kV Switchyard-Position 3 - Install the following equipment for a double-breaker bank position on a breaker-and-a-half configuration to connect the No. 1AA 500/220kV transformer bank:
    - i. one (1) 108 ft. high by 90 ft. wide dead-end structure
    - ii. two (2) 500kV-4000A-50kA circuit breakers
    - iii. four (4) 500kV horizontal-mounted group-operated disconnect switches, one of them equipped with grounding attachments
    - iv. fifteen (15) 500kV bus supports
    - v. 2B-1590 kcmil ACSR conductors
  - b. 500kV Switchyard-500/220kV Transformer Bank – Install one (1) 1120MVA, 500/220kV transformer bank to include the following:
    - i. four (4) 373MVA, 500/220kV single-phase units, including one spare unit
    - ii. three (3) 500kV surge arresters
    - iii. three (3) 220kV surge arresters
    - iv. one (1) standard seven-position transformer structure with all the required 500kV and 220kV bus-work to allow for the grounded wye/delta connection of the single-phase units and placement of the spare unit
    - v. one (1) 13.8kV tertiary bus equipped as follows:
      1. five (5) 13.8kV, 2000A-17kA circuit breakers

2. fifteen (15) 13.8kV hook-stick disconnect switches
3. five (5) 13.8 kV 45MVAR reactors
4. one (1) ground bank detector (3-5MVA, 14400-120/240v transformers)
5. one (1) 14400-120V voltmeter potential transformer
6. one (1) voltmeter
7. three (3) 40E standard size 4 S&C type fuses
- vi. approximately 700 circuit ft. of 2B-1590 kcmil ACSR conductors for the 500kV and 220kV transformer leads
- c. 220kV Switchyard Operating Buses – Install the following equipment required for a new 220kV switchyard:
  - i. six (6) 60 ft. high x 90 ft. wide bus dead-end structures
  - ii. twenty-four (24) bus dead-end insulator assemblies
  - iii. six (6) 220kV potential devices
  - iv. approximately 920 circuit ft. of 2B-1590 kcmil ACSR bus conductors
- d. 220kV Switchyard-Position 5 – Install the following equipment for a double breaker bank position on a breaker-and-a-half configuration to connect the No.1AA 500/220kV transformer bank:
  - i. one (1) 80 ft. high by 50 ft. wide dead-end structure
  - ii. two (2) 220kV 3000A-50kA circuit breakers
  - iii. four (4) 220kV 3000A-80kA horizontal-mounted group-operated disconnect switches
  - iv. one (1) grounding switch attachment
  - v. eighteen 220kV bus supports with associated steel pedestals
  - vi. 2B-1590 kcmil ACSR conductors
- e. Control Room – Install the following protection relays for the 500/220kV transformer banks:
  - i. four (4) GE C60 breaker management relays
  - ii. one (1) GE T60 bank differential relay
  - iii. one (1) SEL-387 bank differential relay
  - iv. four (4) GE C30 sudden pressure aux relay
  - v. five (5) GE F60 reactor bank relays (one per reactor)
  - vi. two (2) SEL-351 ground detector bank relay
  - vii. twelve (12) GE SBD11B 220kV bus differential relays
4. Upgrade the Mira Loma-Vista No.2 220kV Transmission Line drops at Vista Substation
  - a. Vista Substation – replace the 2B-1033 kcmil ACSR conductors (N-2 rating of 3,150A) on the Mira Loma No. 2 220kV line position at Vista Substation with new 2B-1590 kcmil ACSR conductors (N-2 rating of 4,100A)
5. New SPS to trip up to 1,400 MW of generation under the Devers-Red Bluff No. 1 and No. 2 double contingency
  - a. Devers Substation
    - i. install two (2) N60 relays (one each for SPS A and SPS B) for line monitoring



- ii. install one (1) SEL-2407 satellite synchronized clock
- iii. Telecommunications- install two (2) channel banks (one each for SPS A and SPS B) to support the SPS
- iv. Power Systems Control- expand the RTU at Devers to install additional points required to support the SPS
- b. Red Bluff Substation
  - i. install two (2) N60 relays (one each for SPS A and SPS B) for line monitoring
  - ii. install one (1) SEL-2407 satellite synchronized clock
  - iii. Power Systems Control- expand the RTU at Red Bluff to install additional points required to support the SPS
- c. Colorado River Substation
  - i. install four (4) N60 relays (two each for SPS A and SPS B) for logic central processing and sending of tripping signals to generators
  - ii. install one (1) SEL-2407 satellite synchronized clock
  - iii. install dual RTUs for SPS arming, control, status and alarm indications at Colorado River Substation
- 6. New SPS to trip up to 500 MW of generation connected to Colorado River Substation under either No. 1 AA or No. 2 AA transformer bank single contingency
  - a. Colorado River Substation
    - i. install four (4) N60 relays (two each for SPS A and SPS B) for banks monitoring
  - b. Red Bluff Substation
    - i. Power Systems Control- expand the RTU at Red Bluff to install additional points required to support the SPS
  - c. Devers Substation
    - i. Power Systems Control- expand the RTU at Devers to install additional points required to support the SPS

(ii) **Participating TO's Delivery Network Upgrades:** The Participating TO shall:

- 1. West of Devers Upgrades
  - a. Upgrade the following 220kV transmission lines by rebuilding the following transmission lines with new 2B-1590 kcmil ACSR conductors per phase supported on two sets of double-circuit tower structures and replacing all substations' terminal equipment with 3,000A rated elements:
    - i. Devers – San Bernardino No.1 220kV Transmission Line – 43 circuit miles
    - ii. Devers – San Bernardino No.2 220kV Transmission Line – 43 circuit miles
    - iii. Devers – Vista No.1 220kV Transmission Line – 45 circuit miles
    - iv. Devers – Vista No.2 220kV Transmission Line – 45 circuit miles

- v. Devers Substation: Upgrade four 220kV line positions
- vi. San Bernardino G.S.: Upgrade two 220kV line positions
- vii. Vista Substation: Upgrade two 220kV line positions

Prior to this upgrade the Devers-San Bernardino No. 2 220kV Transmission Line will be looped into the new El Casco Substation forming the two new Devers-El Casco and El Casco-San Bernardino 220kV Transmission Lines. After such line re-configuration, the Devers – San Bernardino No.1 220kV Transmission Line will be re-named Devers – San Bernardino 220kV Transmission Line. The Devers and San Bernardino 220kV line positions at the new El Casco Substation will be rated 3,000A and would not require any upgrades.

2. Colorado River Substation Expansion – No. 2AA Bank – Increase the 500/220kV station capacity from 1120MVA to 2240MVA by installing an additional No. 2AA 1120MVA 500/220kV transformer bank with corresponding 500kV and 220kV bank positions as follows:
  - a. 500kV Switchyard, Position 5 – Install the following equipment on the double breaker line position to expand to a breaker-and-a-half line/bank position as required to connect the No. 2AA transformer bank
    - i. one (1) 108 ft. high x 90 ft. wide dead-end structure
    - ii. one (1) 500kV 4000A-50kA circuit breaker
    - iii. two (2) 500kV 4000A-80kA horizontal-mounted group-operated disconnect switches
    - iv. one (1) grounding switch attachment
    - v. remove twelve (12) 500kV bus supports and corresponding steel pedestals and foundations
  - b. 500 kV Switchyard-500kV/220kV Transformer Bank – Install one 1120MVA 500/220kV transformer bank as follows:
    - i. three (3) 373MVA, 500/220kV single-phase transformers
    - ii. three (3) 500kV surge arresters
    - iii. three (2) 220kV surge arresters
    - iv. one (1) 13.8kV tertiary bus equipped as follows:
      1. five (5) 13.8kV, 2000A-17kA circuit breakers
      2. fifteen (15) 13.8kV hook-stick disconnect switches
      3. five (5) 13.8 kV, 45MVAR reactors
      4. one (1) ground bank detector (3-5MVA, 14400-120/240v transformers)
      5. one (1) 14400-120V voltmeter potential transformer
      6. one (1) voltmeter
      7. three (3) 40E standard size 4 S&C type fuses
    - v. approximately 700 circuit ft. of 2B-1590 kcmil ACSR conductors for the 500kV and 220kV transformer leads
  - c. 220kV Switchyard, Position 7 – Install the following equipment for a double breaker bank position on a breaker-and-a-half configuration to connect the No. 2AA 500/220kV transformer bank:

- i. one (1) 80 ft. high by 50 ft. wide dead-end structure
- ii. two (2) 220kV, 3000A-50kA circuit breakers
- iii. four (4) 220kV, 3000A-80kA horizontal-mounted group-operated disconnect switches
- iv. one (1) grounding switch attachment
- v. eighteen 220kV bus supports with associated steel pedestals
- vi. 2B-1590 kcmil ACSR conductors
- d. Control Room – Install the following protection relays for the 500/220kV transformer banks:
  - i. four (4) GE C60 breaker management relays
  - ii. one (1) GE T60 bank differential relay
  - iii. one (1) SEL-387 bank differential relay
  - iv. three (3) GE C30 sudden pressure aux relay
  - v. five (5) GE F60 reactor bank relays (one per reactor)
  - vi. two (2) SEL-351 ground detector bank relay
  - vii. twelve (12) GE SBD11B 220kV bus differential relays

3. Real Properties, Transmission Project Licensing, and Environmental Health and Safety:

- a. Perform all required functions to obtain land easements or land acquisition, obtain licensing and permits, and perform required environmental activities for the installation of the Participating TO's Delivery Network Upgrades.

**3. Distribution Upgrades: None**

**4. Licensing Assessment: The Participating TO shall:**

- (a) Perform a Licensing Assessment including, but not limited to, preliminary preparation and review of the following elements:
  - (i) environmental studies, land rights studies, and topographic studies as necessary
  - (ii) geotechnical, hydrological, grading, and other site development items as necessary
  - (iii) structural plans including equipment foundations, structural steel supports, and control room layouts as necessary
  - (iv) electrical plans including disconnect switches, busses, relay racks and power circuits as necessary
  - (v) line reactor plans including engineering design, placement and configuration as necessary
  - (vi) transmission plans including relocation of structures and rerouting of 220kV lines as necessary
  - (vii) telecommunications plans including rerouting optical fiber around line reactors, mechanical electrical equipment room connections, switches and hubs as necessary

- (viii) SPS plans including protection, relays, telecommunications, and associated equipment as necessary
- (ix) subtransmission plans including rerouting of existing 115kV lines and impacts to other projects as necessary
- (b) Seek CPUC concurrence with Participating TO's assessment of the permitting and licensing requirements based on the results of the Licensing Assessment

Based on the results of the Licensing Assessment, the Parties may elect to proceed with engineering, design, procurement and construction of the west of Devers Substation interim upgrades pursuant to the terms and conditions of a separate letter agreement or an amendment to this LGIA.

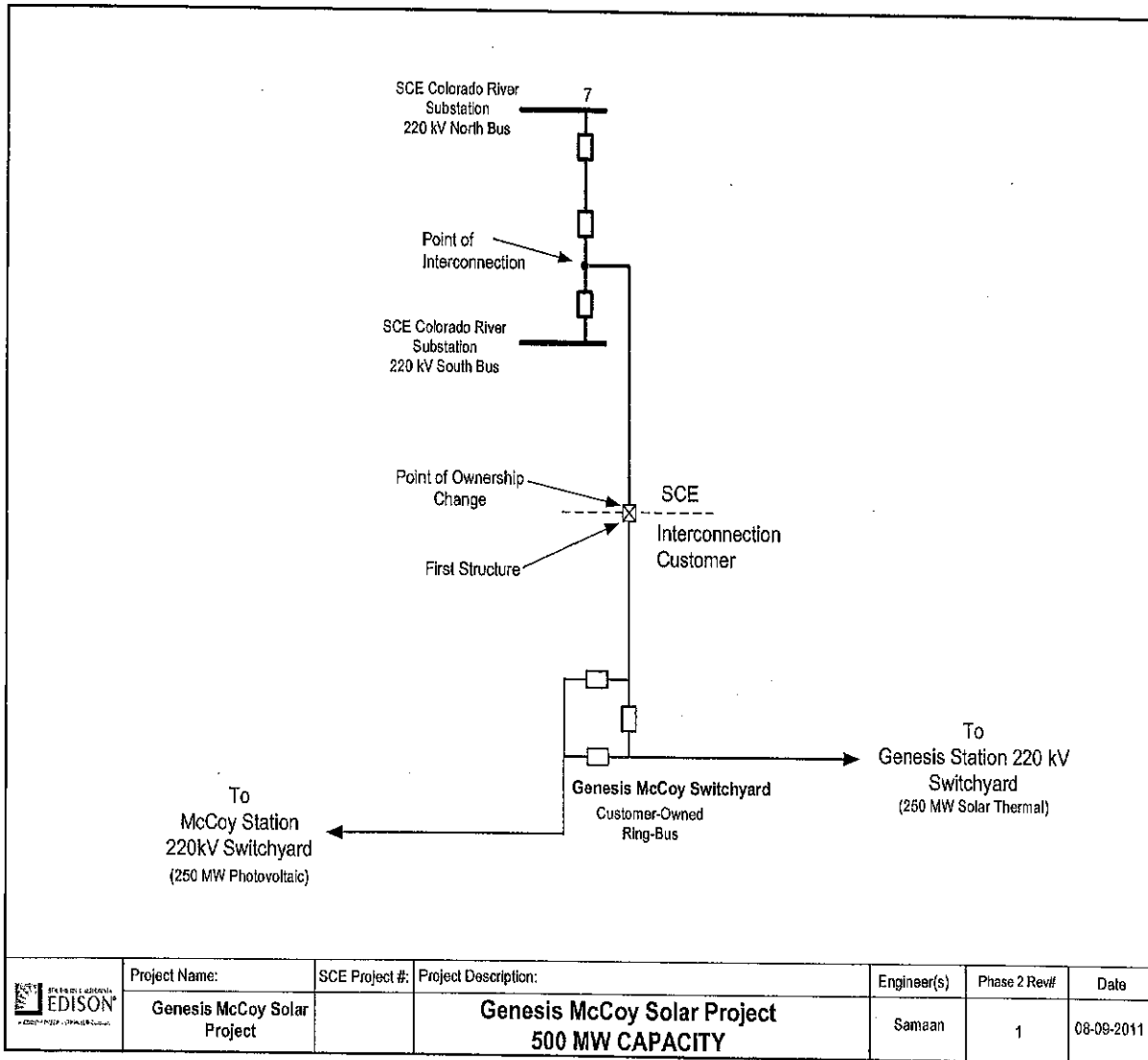
**5. Point of Change of Ownership:**

- (a) Prior to construction of the Genesis McCoy 220kV Switchyard:
  - (i) Colorado River-Genesis 220 kV Transmission Line: The Point of Change of Ownership shall be the point where the conductors of the Colorado River-Genesis 220kV Transmission Line are attached to the first structure located directly outside the Colorado River Substation property line. This will be the side of the structure facing the substation. The Interconnection Customer shall own and maintain said structure, including the jumper loop. The Participating TO shall own and maintain the insulators that are used to attach the Participating TO-owned conductors to the Interconnection Customer-owned structure, and all structures and conductors from that point into the Colorado River Substation.
  - (ii) Telecommunication OPGW: The Point of Change of Ownership shall be the point where the OPGW of the Colorado River-Genesis 220 kV Transmission Line is attached to the first structure located directly outside the Colorado River Substation property line.
  - (iii) Telecommunication ADSS: The Point of Change of Ownership shall be the point where the ADSS from the Genesis Station is attached to the first structure located directly outside the Colorado River Substation property line. The Interconnection Customer shall own and maintain said structure. The Participating TO shall own and maintain all structures and cable from that point into the Colorado River Substation.
- (b) Following construction of the Genesis McCoy 220kV Switchyard:
  - (i) Colorado River-Genesis McCoy 220 kV Transmission Line: The Point of Change of Ownership shall be the point where the conductors of the Colorado River-Genesis McCoy 220kV Transmission Line are attached to the first structure located directly outside the Colorado River Substation property line. This will be the side of the structure facing the substation. The Interconnection Customer shall own and maintain said structure, including the jumper loop. The Participating TO shall own and maintain the insulators that are used to attach the Participating TO-owned conductors to the Interconnection Customer-owned structure, and all structures and conductors from that point into the Colorado River Substation.

- (ii) Telecommunication OPGW: The Point of Change of Ownership shall be the point where the OPGW of the Colorado River-Genesis McCoy 220 kV Transmission Line is attached to the first structure located directly outside the Colorado River Substation property line.
- (iii) Telecommunication ADSS: The Point of Change of Ownership shall be the point where the ADSS from the Genesis Station and the ADSS from the McCoy Station are attached to the first structure located directly outside the Colorado River Substation property line. The Interconnection Customer shall own and maintain said structure. The Participating TO shall own and maintain all structures and cable from that point into the Colorado River Substation.

6. **Point of Interconnection:** The Participating TO's bus bar at the Colorado River Substation, which is the 220kV bus.

7. One-Line Diagram of Interconnection to Colorado River Substation:



8. **Additional Definitions:** For the purposes of these Appendices, the following terms, when used with initial capitalization, whether in the singular or the plural, shall have the meanings specified below:

- (a) **Accounting Practice:** Generally Accepted Accounting Principles in the United States consistently applied to electric utility operations.
- (b) **Capital Additions:** Any modifications to the Participating TO's Interconnection Facilities in accordance with Article 5.19 of the LGIA. Such modifications may be any Units of Property which are added to the Participating TO's Interconnection

Facilities; the enlargement, modification or betterment of any Units of Property constituting a part of the Participating TO's Interconnection Facilities ; or the replacement of any Units of Property constituting a part of the Participating TO's Interconnection Facilities, irrespective of whether such replacement constitutes an enlargement, modification or betterment of that which it replaces; the costs of which additions, enlargements, modifications, betterments or replacements in accordance with Accounting Practice would be capitalized and have not previously been included in the Interconnection Facilities Cost. If Capital Additions are required in order to benefit the Participating TO, or because of damage caused by negligence or willful misconduct of the Participating TO, then the Interconnection Customer will not bear cost responsibility for such Capital Additions, and no adjustment will be made to the Interconnection Facilities Cost, and no Capital Additions Cost or One-Time Cost will be charged to the Interconnection Customer for such Capital Additions.

- (c) Colorado River Substation: Participating TO's proposed 500/220kV substation near Blythe, California to which the Devers-Palo Verde 500kV Transmission Line will be looped-in and which will be the eastern terminus of Participating TO's proposed Colorado River-Red Bluff No. 2 500kV line.
- (d) Construction Activities: Actions by the Participating TO that result in irrevocable financial commitments for the purchase of major electrical equipment or land for Participating TO's Interconnection Facilities or Network Upgrades assigned to the Interconnection Customer that occur after receipt of all appropriate governmental approvals needed for the Participating TO's Interconnection Facilities or Network Upgrades.
- (e) CPUC: The California Public Utilities Commission, or its regulatory successor.
- (f) Credit Support: Parent guarantee, letter of credit, surety bond, or other security meeting the requirements of Article 11.5 of the LGIA.
- (g) Customer-Financed Monthly Rate: The rate most recently adopted by the CPUC for application to the Participating TO's retail electric customers for added facilities, which does not compensate the Participating TO for replacement of added facilities. The currently effective Customer-Financed Monthly Rate is as provided in Section 17 of this Appendix A.
- (h) Delivery Network Upgrades Cost: The Interconnection Customer's share of all costs, excluding One-Time Cost, determined by the Participating TO associated with the design, engineering, procurement, construction and installation of the Participating TO's Delivery Network Upgrades. The Delivery Network Upgrades Cost is provided in Section 16 of this Appendix A.

- (i) Delivery Network Upgrades Payment: The sum of the Delivery Network Upgrades Cost and associated One-Time Cost. The Delivery Network Upgrades Payment is provided in Section 18 of this Appendix A.
- (j) Distribution Upgrades Cost: All costs, excluding ITCC and One-Time Cost, determined by the Participating TO associated with the design, engineering, procurement, construction and installation of the Distribution Upgrades. The Distribution Upgrades Cost is provided in Section 16 of this Appendix A.
- (k) Distribution Upgrades Payment: The sum of the Distribution Upgrades Cost and the associated One-Time Cost. The Distribution Upgrades Payment is provided in Section 18 of this Appendix A.
- (l) Genesis McCoy 220kV Switchyard: Interconnection Customer's 220kV switchyard to be located near Blythe, California in close proximity to the Colorado River Substation. The Genesis McCoy 220kV Switchyard will be configured in a ring bus and will connect the Genesis Station and the McCoy Station to the Colorado River Substation.
- (m) Genesis Station: Interconnection Customer's 250 MW solar thermal generating facility located near Desert Center, California. The Genesis Station is proposed to be the first of two sequences that comprise the Genesis McCoy Solar Project, a Phased Generating Facility.
- (n) Interconnection Facilities Charge: The monthly charge to the Interconnection Customer to recover the revenue requirements for the Participating TO's Interconnection Facilities, calculated as the product of the Customer-Financed Monthly Rate and the Interconnection Facilities Cost. The Interconnection Facilities Charge is provided in Section 17 of this Appendix A.
- (o) Interconnection Facilities Completion Date: The date upon which the construction of the Participating TO's Interconnection Facilities for the applicable First Sequence or Second Sequence is complete and such facilities are successfully tested and ready for service.
- (p) Interconnection Facilities Cost: All costs, excluding One-Time Cost, determined by the Participating TO associated with the design, engineering, procurement, construction and installation of the Participating TO's Interconnection Facilities. The Interconnection Facilities Cost is provided in Section 16 of this Appendix A.
- (q) Interconnection Facilities Payment: The sum of the Interconnection Facilities Cost and associated One-Time Cost. The Interconnection Facilities Payment is provided in Section 18 of this Appendix A.
- (r) ITCC: The ITCC is equal to the estimated tax liability described in Article 5.17.4 of the LGIA, and is the Income Tax Component of Contribution specified in the



Preliminary Statement, Part M of the Participating TO's tariff on file with the CPUC, applicable to the Distribution Upgrades Cost and Interconnection Facilities Cost. The ITCC applicable to the Distribution Upgrades Cost and Interconnection Facilities Cost is described in Section 11 of this Appendix A and is shown in Section 16 and Section 18 of this Appendix A.

- (s) Letter Agreements: The agreements between Participating TO and Interconnection Customer executed on i) April 28, 2010 under which Participating TO performed the Colorado River Substation expansion siting study, designated as Service Agreement No. 82 under Participating TO's FERC Electric Tariff, Volume 6; and ii) September 8, 2010 under which Participating TO performed expedited engineering, design, and procurement activities related to the Participating TO's Interconnection Facilities and Participating TO's Reliability Network Upgrades, designated as Service Agreement No. 88 under Participating TO's FERC Electric Tariff, Volume No. 6.
- (t) Licensing Assessment: A preliminary analysis performed by the Participating TO at the request of the Interconnection Customer to determine the permitting and CPUC licensing requirements, if any, for a proposed interim upgrade west of Participating TO's Devers Substation that would provide the Genesis McCoy Solar Project a certain amount of Full Capacity Deliverability Status until such time as the Participating TO's Deliverability Network Upgrades can be constructed and placed in service.
- (u) Licensing Assessment Cost: Interconnection Customer's share, as ultimately determined by Participating TO by the number of projects requesting the Licensing Assessment, of all costs determined by the Participating TO to be associated with the work performed to complete the Licensing Assessment. The Licensing Assessment Cost is provided in Section 16 of this Appendix A. The Licensing Assessment Cost is not capitalized and is not subject to ITCC.
- (v) Licensing Assessment Payment: Interconnection Customer's payment for the Licensing Assessment Cost. The Licensing Assessment Payment is provided in Section 18 of this Appendix A.
- (w) McCoy Station: Interconnection Customer's 250 MW photovoltaic generating facility located near Blythe, California. The McCoy Station is proposed to be the second of two sequences that comprise the Genesis McCoy Solar Project, a Phased Generating Facility.
- (x) One-Time Cost: All costs determined by the Participating TO associated with the installation of the Participating TO's Delivery Network Upgrades, Distribution Upgrades, Participating TO's Interconnection Facilities, Participating TO's Reliability Network Upgrades, or Capital Additions which are not capitalized.

- (y) Reliability Network Upgrades Cost: The Interconnection Customer's share of all costs, excluding One-Time Cost, determined by the Participating TO associated with the design, engineering, procurement, construction and installation of the Participating TO's Reliability Network Upgrades. The Reliability Network Upgrades Cost is provided in Section 16 of this Appendix A.
- (z) Reliability Network Upgrades Payment: The sum of the Reliability Network Upgrades Cost and associated One-Time Cost. The Reliability Network Upgrades Payment is provided in Section 18 of this Appendix A.
- (aa) Removal Cost: The actual cost the Participating TO incurs for the removal of the Participating TO's Interconnection Facilities, or any portion thereof which is calculated as the amount, if positive, of the costs of removal minus the salvage value of the Participating TO's Interconnection Facilities.
- (bb) Special Protection System ("SPS"): A system that reduces or trips generation under contingency outages to maintain system stability or to limit overloads on system facilities.
- (cc) Units of Property: As described in FERC's "List of Units of Property for Use in Connection with Uniform System of Accounts Prescribed for Public Utilities and Licensees" in effect as of the date of this LGIA, and as such list may be amended from time to time.

**9. Transmission Credits:**

No Congestion Revenue Rights or repayment will be made pursuant to Articles 11.4 and 11.4.1 of the LGIA for the Network Upgrades that are up-front financed by the Participating TO, unless financing for such Network Upgrades is later provided by the Interconnection Customer under Section 14(d) of this Appendix A.

**10. Security Amount for the Distribution Upgrades, Participating TO's Interconnection Facilities and Network Upgrades:**

- (a) Distribution Upgrades: Pursuant to Article 11.5 and Appendix B of the LGIA, the Interconnection Customer shall provide Credit Support in the amount of \$0 to cover the costs for constructing, procuring and installing the Participating TO's Distribution Upgrades. The disposition of any released Credit Support shall be directed by the Interconnection Customer.
- (b) Participating TO's Interconnection Facilities: Pursuant to Section 9 of the GIP, Article 11.5 and Appendix B of the LGIA, the Interconnection Customer shall provide a total Credit Support in the amount of \$977,700 for the second posting and \$3,394,000 for the third posting to cover the costs for constructing, procuring and installing the Participating TO's Interconnection Facilities. The disposition of any released Credit Support shall be directed by the Interconnection Customer.
- (c) Network Upgrades: The Participating TO has received Abandoned Plant Approval, pursuant to the FERC order issued in *Southern California Edison Co.*, 134 FERC ¶ 61,181 (2011), and has committed to finance all Network Upgrades

for the Cluster subject to Appendix A, Section 14(d), Table 1 of this LGIA. As the Participating TO has received Abandoned Plant Approval, the Interconnection Financial Security second and third postings are waived pursuant to the FERC Order Granting Waiver of Tariff Provisions in Docket No. ER10-1656-000, issued August 13, 2010 for such time as the Participating TO is responsible for financing the costs of such Network Upgrades under this LGIA. To the extent the Interconnection Customer has provided Credit Support related to the Network Upgrades prior to a determination of Abandoned Plant Approval, such Credit Support shall be released within thirty (30) Calendar Days following the Effective Date.

(d) Participating TO's ability to draw on the Credit Support shall be governed by GIP Section 9.4 and Article 2.4 of this LGIA.

**11. Security Amount for Estimated Tax Liability:** Pursuant to Article 5.17.4 of the LGIA, the Interconnection Customer's estimated tax liability is as follows:

$(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate}) = 35\%$

Estimated tax liability for Distribution Upgrades =  $35\% \times \text{Distribution Upgrades Cost} = 35\% \times (\$0) = \$0$

Estimated tax liability for Participating TO's Interconnection Facilities =  $35\% \times \text{Interconnection Facilities Cost} = 35\% \times \$3,394,000 = \$1,187,900$

Interconnection Facilities Cost = \$3,394,000  
Distribution Upgrades Cost = \$0

Based upon the total estimated tax liability, the Interconnection Customer shall provide the Participating TO cash or a letter of credit in the amount of \$1,187,900 pursuant to Article 5.17.3 and Appendix B of the LGIA.

**12. Treatment of Partial Termination Charge Security:**

(a) **Amount:** The amount of the Partial Termination Charge Security shall equal \$3,491,575 for each 125 MW Electric Generating Unit that the Interconnection Customer elects to be eligible for Partial Termination. With respect to the Phased Generating Facility, Interconnection Customer shall be entitled (upon providing the Partial Termination Charge Security to the CAISO) to secure Partial Termination rights with respect to Electric Generating Units 2, 3 and/or 4, which, if the Interconnection Customer secures Partial Termination rights to all three (3) Electric Generating Units comprising 375 MW, would result in a maximum Partial Termination Charge Security of \$10,474,725. The Interconnection Customer shall make its election and designation of the Electric Generating Unit(s) to be eligible for Partial Termination at the time of the Partial Termination Charge Security posting. The Parties acknowledge that Partial Termination shall not be

- available for Electric Generating Unit 1, and agree that Electric Generating Unit 1 shall not be the subject of a Partial Termination pursuant to this LGIA.
- (b) **Timing for Posting of Partial Termination Charge Security:** The entire amount of the Partial Termination Charge Security for all Electric Generating Units for which the Interconnection Customer elects to secure eligibility for Partial Termination shall be posted no later than thirty (30) Calendar Days following the Effective Date. In the event that the Interconnection Customer fails to timely post the Partial Termination Charge Security, then, as specified in Article 2.4.4, the provisions of this LGIA permitting Partial Termination shall not be operative and termination of this LGIA may only occur with respect to the entire Generating Facility.
- (c) **Reduction of Partial Termination Charge Security for Electric Generating Units that Achieve Commercial Operation Prior to Termination:** Within fifteen (15) Calendar Days following Commercial Operation of each 125 MW Electric Generating Unit for which Partial Termination has been secured but not exercised, the Partial Termination Charge Security shall be reduced by the amount of \$3,491,575. If the Interconnection Customer posts security in the form of a cash deposit, such cash funds shall be released and/or returned to the Interconnection Customer. If the Interconnection Customer posts another form of financial security of the type specified in CAISO GIP (CAISO Tariff Appendix Y) Section 9.1, the Parties shall cooperate and execute such necessary documents as to accomplish a replacement security in the lower amount or take other action necessary to accomplish the reduction in Partial Termination Charge Security.
- (d) **Liquidation of Partial Termination Charge Security for Failure to Achieve Commercial Operation:** If the Interconnection Customer has not achieved Commercial Operation of Electric Generating Units 2, 3 and/or 4 by the later of (i) eighty-four (84) months from the execution date of this LGIA or (ii) the in-service date of the Network Upgrades necessary to provide the entire Generating Facility with full deliverability (the "Outside Date"), the Participating TO shall have the right to (a) upon the mutual determination of the CAISO and the Participating TO that an event of Partial Termination has occurred and notice of the same is given as provided for in Article 2.4.4.2, request that the CAISO liquidate the Partial Termination Charge Security applicable to the Electric Generating Units that have not achieved Commercial Operation by the Outside Date, and (b) terminate this LGIA solely with respect to the Electric Generating Units that have not achieved Commercial Operation by the Outside Date, and apply the proceeds of the Partial Termination Charge as provided for in Article 2.4.4.5.
- (e) **Liquidation of Partial Termination Charge Security upon Partial Termination by the Interconnection Customer:** In the event that the Interconnection Customer exercises its Partial Termination rights pursuant to Article 2.4.4 of this LGIA, (a) the CAISO shall liquidate the Partial Termination Charge Security applicable to the Electric Generating Units that are subject to the Partial Termination and apply the proceeds of the Partial Termination Charge as provided for in Article 2.4.4.5, and (b) this LGIA shall be terminated solely with respect to the Electric Generating Units for which Partial Termination has been exercised.

- (f) **Liquidation of the Partial Termination Charge Security upon Default for Failure to Meet a Milestone:** In the event the Interconnection Customer fails to cure a Breach of any one of the milestones specified in Table 1 under Section 14(d) below and the Participating TO declares a Default under Article 17 of this LGIA, the Participating TO shall have the right to (a) upon mutual determination of the CAISO and the Participating TO that an event of Partial Termination has occurred and notice of the same is given as provided for in Article 2.4.4.2, request that the CAISO liquidate the Partial Termination Charge Security applicable to the Electric Generating Units that have not achieved Commercial Operation, and (b) terminate this LGIA solely with respect to the Electric Generating Units that have not achieved Commercial Operation, and apply the proceeds of the Partial Termination Charge as provided for in Article 2.4.4.5.
- 13. Removal of the Participating TO's Interconnection Facilities:** Following termination of the LGIA, the Participating TO will remove the Participating TO's Interconnection Facilities from service to the Interconnection Customer pursuant to Article 2.5 of the LGIA. On or before the date one year following termination of the LGIA, the Participating TO shall notify the Interconnection Customer whether the Participating TO intends to physically remove the Participating TO's Interconnection Facilities, or any part thereof. If the Participating TO intends to physically remove the Participating TO's Interconnection Facilities, or any part thereof, then the Participating TO shall physically remove such facilities within two years from the date of notification of intent, and the Interconnection Customer shall pay the Removal Cost. If the Participating TO does not intend to physically remove the Participating TO's Interconnection Facilities, or any part thereof, then the Interconnection Customer shall have no obligation to pay such Removal Cost.
- 14. Charges:**
- (a) The Interconnection Customer shall pay to the Participating TO the following charges in accordance with the LGIA: (i) Distribution Upgrades Payment; (ii) Delivery Network Upgrades Payment, if applicable; (iii) Interconnection Facilities Payment; (iv) Reliability Network Upgrades Payment, if applicable; (v) payments for any Capital Additions; (vi) Interconnection Facilities Charge; (vii) any reimbursable FERC fees pursuant to Section 15(g) of this Appendix A; (viii) Removal Cost pursuant to Article 2.4.3 of the LGIA and Section 15(f) of this Appendix A; (ix) termination charges pursuant to Article 2.4 of the LGIA, provided that such charges shall not be applicable to the extent the costs associated with termination of the LGIA are subject to Abandoned Plant Approval received by the Participating TO; (x) disconnection costs pursuant to Article 2.5 of the LGIA; (xi) suspension costs pursuant to Article 5.16 of the LGIA; and (xii) Licensing Assessment Payment.
- (b) The Distribution Upgrades Cost, Delivery Network Upgrades Cost, Interconnection Facilities Cost, Reliability Network Upgrades Cost, associated

One-Time Cost, Removal Cost, and Licensing Assessment Cost shall be compiled in accordance with Accounting Practice.

- (c) If, during the term of the LGIA, the Participating TO executes an agreement to provide service to another entity (other than for retail load) which contributes to a need for the Participating TO's Interconnection Facilities, the charges due hereunder may be adjusted to appropriately reflect such service based on the Participating TO's cost allocation principles in effect at such time, and shall be subject to FERC's approval.
- (d) The Participating TO commits to up-front finance the cost of the Network Upgrades including the associated One-Time Cost specifically identified in Section 2 of this Appendix A to the LGIA, contingent upon the continued achievement of the Milestones and Decisions Points, as described in Table 1 below, by the Interconnection Customer, as such Milestones and Decision Points may be adjusted pursuant to Option 2 of Table 2B below or a suspension pursuant to Article 5.16 of this LGIA.

**Table 1: Participating TO and Interconnection Customer Milestones and Decision Points**

The milestones in this Table 1 and in Appendix B, Section 2 reflect that the Interconnection Customer has designated Genesis Station as the First Sequence and McCoy Station as the Second Sequence. The Parties agree that the Interconnection Customer may re-designate McCoy Station as the First Sequence and Genesis Station as the Second Sequence subject to the Interconnection Customer providing written notice of such re-designation to the CAISO and the Participating TO by no later than February 1, 2012. Following such re-designation, the Partial Termination Charge Security would remain applicable to Electric Generating Unit 2 of the First Sequence and Electric Generating Units 3 & 4 of the Second Sequence.

<b>Group 1 Milestones and Decision Point #1 for the First Sequence-Genesis Station</b>	
<b>Participating TO Milestone</b>	<b>Interconnection Customer Milestone</b>
<ul style="list-style-type: none"> <li>Participating TO commences final design and engineering of Participating TO's Interconnection Facilities for the First Sequence-Genesis Station and Participating TO's Reliability Network Upgrades.</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer secures final Site Exclusivity as defined in the GIP for the Genesis Station.</li> <li>Interconnection Customer has provided Interconnection Financial Security in accordance with Section 9 of the GIP (CAISO Tariff Appendix Y) and applicable FERC orders.</li> </ul>
<p><b>DECISION POINT #1:</b> Following Participating TO's written notification of Participating TO's completion of all of its Group 1 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 1 milestones within ninety (90) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.</p>	

**Group 2 Milestones and Decision Point #2 for the First Sequence-Genesis Station**

<b>Participating TO Milestone</b>	<b>Interconnection Customer Milestone</b>
<ul style="list-style-type: none"> <li>Participating TO secures all required permits, licenses, and property rights for the Participating TO's Interconnection Facilities for the First Sequence-Genesis Station and Participating TO's Reliability Network Upgrades.</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer secures all permits, licenses, and Site Exclusivity required for the construction of the First Sequence-Genesis Station and Interconnection Customer's Interconnection Facilities for the Genesis Station.</li> </ul>

**DECISION POINT #2:** Following Participating TO's written notification of Participating TO's completion of all of its Group 2 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 2 milestones within ninety (90) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.



**Group 3 Milestones and Decision Point #3 for the First Sequence-Genesis Station**

Participating TO Milestone	Interconnection Customer Milestone
<ul style="list-style-type: none"> <li>Participating TO completes final design and engineering for the Participating TO's Interconnection Facilities for the First Sequence-Genesis Station and Participating TO's Reliability Network Upgrades.</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer selects Engineering, Procurement and Construction ("EPC") contractor for the First Sequence-Genesis Station. If the Interconnection Customer elects to self-build the project, an engineering services firm will be engaged and contracts for procurement of long lead/major equipment for one Electric Generating Unit of the First Sequence-Genesis Station will be executed.</li> <li>Interconnection Customer secures 100% of financing, or its board approval if financing is carried on Interconnection Customer's balance sheet, to construct at least one Electric Generating Unit of the First Sequence-Genesis Station and the Interconnection Customer's Interconnection Facilities for the Genesis Station.</li> </ul> <p>Note: If Interconnection Customer has elected Partial Termination of Electric Generating Unit 2 of the First Sequence-Genesis Station, then the Participating TO shall have the right, at its sole discretion, not to commence any Construction Activities for any Participating TO's Delivery Network Upgrades required solely for Electric Generating Unit 2 of the First Sequence-Genesis Station.</p>

**DECISION POINT #3:** Following Participating TO's written notification of Participating TO's completion of all of its Group 3 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 3 milestones within ninety (90) Calendar Days of

the Participating TO's notification. Parties exercise options as outlined in Table 2.

**Group 4 Milestones and Decision Point #4 for the First Sequence Genesis Station**

<b>Participating TO Milestone</b>	<b>Interconnection Customer Milestone</b>
<ul style="list-style-type: none"><li>• Participating TO commences Construction Activities of the Participating TO's Reliability Network Upgrades</li></ul>	<ul style="list-style-type: none"><li>• Interconnection Customer commences construction of at least one Electric Generating Unit of the First Sequence-Genesis Station and the Interconnection Customer's Interconnection Facilities for the Genesis Station.</li></ul>

**DECISION POINT #4:** Following Participating TO's written notification of Participating TO's completion of all of its Group 4 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 4 milestones within thirty (30) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.

**Group 5 Milestones and Decision Point #5 for the First Sequence-Genesis Station**

Participating TO Milestone	Interconnection Customer Milestone
<ul style="list-style-type: none"> <li>Participating TO energizes the Participating TO's Reliability Network Upgrades, enabling Commercial Operation of the Phased Generating Facility (Participating TO shall inform the Interconnection Customer at least ninety (90) Calendar Days prior to such energization date whether the Participating TO's Reliability Network Upgrades will be completed as estimated by the Participating TO).</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer achieves Initial Synchronization Date for at least one Electric Generating Unit of the First Sequence-Genesis Station.</li> <li>Interconnection Customer commences generating electricity for sale, excluding electricity generated during Trial Operation, of at least one Electric Generating Unit of the First Sequence-Genesis Station.</li> </ul>

**DECISION POINT #5:** Following Participating TO's written notification of Participating TO's completion of all of its Group 5 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 5 milestones within one hundred fifty (150) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.

**Group 1 Milestones and Decision Point #1 for the Second Sequence-McCoy Station**

<b>Participating TO Milestone</b>	<b>Interconnection Customer Milestone</b>
<ul style="list-style-type: none"> <li>Participating TO commences final design and engineering of the Participating TO's Interconnection Facilities for the Second Sequence-McCoy Station and Participating TO's Delivery Network Upgrades.</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer secures final site exclusivity for the Second Sequence-McCoy Station by filing form SF299 with the Bureau of Land management (BLM). BLM shall deem the Interconnection Customer "first in line" to develop a solar energy generating facility on said public lands. The Interconnection Customer will also file a Plan of Development for the McCoy Station, approved by the BLM.</li> <li>Interconnection Customer has provided Interconnection Financial Security in accordance with Section 9 of the GIP (CAISO Tariff Appendix Y) and applicable FERC Orders.</li> </ul>

**DECISION POINT #1:** Following Participating TO's written notification of Participating TO's completion of all of its Group 1 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 1 milestones within ninety (90) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.

<b>Group 2 Milestones and Decision Point #2 for the Second Sequence-McCoy Station</b>	
<b>Participating TO Milestone</b>	<b>Interconnection Customer Milestone</b>
<ul style="list-style-type: none"> <li>Participating TO secures all permits, licenses, and property rights for the Participating TO's Interconnection Facilities for the Second Sequence-McCoy Station and Participating TO's Delivery Network Upgrades.</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer secures a Draft Environmental Impact Statement/Environmental Impact Report from the appropriate state and federal agencies granting the permits, licenses, and property rights required for the construction of the Second Sequence-McCoy Station and Interconnection Customer's Interconnection Facilities for the Second Sequence-McCoy Station.</li> </ul>
<p>DECISION POINT #2: Following Participating TO's written notification of Participating TO's completion of all of its Group 2 milestones, which notification by Participating TO shall be no earlier than June 1, 2014, the Interconnection Customer must demonstrate that it has completed all of its Group 2 milestones within ninety (90) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.</p>	
<b>Group 3 Milestones and Decision Point #3 for the Second Sequence-McCoy Station</b>	
<b>Participating TO Milestone</b>	<b>Interconnection Customer Milestone</b>
<ul style="list-style-type: none"> <li>Participating TO completes final design and engineering for the Participating TO's Interconnection Facilities for the Second Sequence-McCoy Station, and Participating TO's Delivery Network Upgrades.</li> <li>Participating TO notifies Interconnection Customer that Participating TO is prepared to commence Construction Activities within ninety (90) Calendar Days.</li> </ul>	<ul style="list-style-type: none"> <li>Interconnection Customer secures and retains all permits, licenses, and Site Exclusivity required for the construction of the Second Sequence-McCoy Station and Interconnection Customer's Interconnection Facilities for the Second Sequence-McCoy Station.</li> <li>Interconnection Customer executes contracts for Engineering, Procurement and Construction ("EPC") contractor for the Second Sequence-McCoy Station. If the Interconnection Customer elects to self-build the project, an engineering services firm will be</li> </ul>

	<p>engaged and contracts for procurement of long lead/major equipment for one Electric Generating Unit of the Second Sequence-McCoy Station will be executed.</p> <ul style="list-style-type: none"> <li>• Interconnection Customer secures 100% of financing, or its board approval if financing is carried on Interconnection Customer's balance sheet, to construct at least one Electric Generating Unit of the Second Sequence-McCoy Station and the Interconnection Customer's Interconnection Facilities for the McCoy Station.</li> </ul> <p>Note: If Interconnection Customer has elected Partial Termination of the Second Sequence-McCoy Station, then the Participating TO is under no obligation to commence Construction Activities for any Participating TO's Delivery Network Upgrades associated with the Second Sequence-McCoy Station.</p>
<p><b>DECISION POINT #3:</b> Following Participating TO's written notification of Participating TO's completion of all of its Group 3 milestones, which such notice by Participating TO shall be no earlier than September 1, 2014, the Interconnection Customer must demonstrate that it has completed all of its Group 3 milestones within ninety (90) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.</p>	
<p><b>Group 4 Milestones and Decision Point #4 for the Second Sequence</b></p>	
<p><b>Participating TO Milestone</b></p>	<p><b>Interconnection Customer Milestone</b></p>
<ul style="list-style-type: none"> <li>• Participating TO commences Construction Activities of the Participating TO's Delivery Network Upgrades.</li> <li>• Participating TO provides two (2) written notices to Interconnection</li> </ul>	<ul style="list-style-type: none"> <li>• Upon Participating TO's notice that it has commenced Construction Activities of the Participating TO's Delivery Network Upgrades, Interconnection Customer shall (1) have entered into, and retain, a</li> </ul>

<p>Customer: (1) upon commencing Construction Activities of Participating TO's Delivery Network Upgrades; and (2) within 12 months prior to completion of Participating TO's Delivery Network Upgrades.</p>	<p>power purchase agreement that requires the McCoy Station to achieve Commercial Operation by no later than December 31, 2017 and; 2) relinquish Interconnection Customers right, from that point forward, to Partial Termination for the Second Sequence McCoy Station.</p> <ul style="list-style-type: none"> <li>• Upon receipt of Participating TO's notice informing Interconnection Customer that it estimates to complete construction of Participating TO's Delivery Network Upgrades within twelve (12) months, Interconnection Customer shall commence construction of at least one Electric Generating Unit of the Second Sequence-McCoy Station and the Interconnection Customer's Interconnection Facilities for the McCoy Station.</li> </ul>
<p><b>DECISION POINT #4:</b> Following Participating TO's written notification of Participating TO's completion of all of its Group 4 milestones, the Interconnection Customer must demonstrate that it has completed each of its Group 4 milestones within ninety (90) Calendar Days of the Participating TO's applicable notification. Parties exercise options as outlined in Table 2.</p>	
<p><b>Group 5 Milestones and Decision Point #5 for the Second Sequence</b></p>	
<p><b>Participating TO Milestone</b></p>	<p><b>Interconnection Customer Milestone</b></p>
<ul style="list-style-type: none"> <li>• Participating TO energizes the Participating TO's Delivery Network Upgrades.</li> </ul>	<ul style="list-style-type: none"> <li>• Interconnection Customer achieves Initial Synchronization Date for at least one Electric Generating Unit of the Second Sequence-McCoy Station.</li> <li>• Interconnection Customer commences generating electricity for sale, excluding electricity generated during Trial Operation, of at least one Electric Generating Unit of the Second Sequence-</li> </ul>

	McCoy Station.
<p>DECISION POINT #5: Following Participating TO's written notification of Participating TO's completion of all of its Group 5 milestones, the Interconnection Customer must demonstrate that it has completed all of its Group 5 milestones within ninety (90) Calendar Days of the Participating TO's notification. Parties exercise options as outlined in Table 2.</p>	



**Table 2: Actions by the Parties at each Decision Point:**

*Table 2A- Participating TO:*

<p>At each Decision Point as set forth in Table 1 above, if the Interconnection Customer is current in meeting its milestones set forth in Table 1 above (as such milestones may be adjusted due to the Interconnection Customer exercising option 2 in Table 2B below), the Participating TO shall confirm its commitment to finance Network Upgrades for the applicable sequence for which the milestones have been met.</p>
<p>If the Interconnection Customer is <u>not</u> current in meeting its milestones as set forth in Table 1 (as such milestones may be adjusted due to the Interconnection Customer exercising option 2 in Table 2B below or its suspension rights under Article 5.16 of this LGIA), the Participating TO has the following additional options:</p> <ol style="list-style-type: none"><li>1) Confirm its commitment to finance the Network Upgrades (but have no obligation to do so).</li><li>2) Discontinue its commitment to finance the Network Upgrades, in which case the Network Upgrades may then be financed by the Interconnection Customer pursuant to Section 14(h) of Appendix A.</li><li>3) Extend the applicable deadline for Interconnection Customer to satisfy the milestone requirement.</li><li>4) Terminate the LGIA, subject to the termination and Partial Termination provisions in this LGIA.</li><li>5) Other actions mutually agreeable to both parties.</li></ol>
<p>The Participating TO will provide written notification to the Interconnection Customer of the option selected.</p>
<p>If the Interconnection Customer's permits, licenses, and Site Exclusivity required pursuant to the Group 3 Milestones above for the construction of the Second Sequence-McCoy Station are later suspended or held in abeyance for any reason, the Participating TO shall have the right, at its sole discretion and upon five (5) Calendar Days written notice, to suspend any Construction Activities for Participating TO's Delivery Network Upgrades required solely for the Second Sequence-McCoy Station and shall not be obligated to resume such Construction Activities until such permits, licenses and Site Exclusivity are reinstated.</p>

*Table 2B – Interconnection Customer:*

<p>At each Decision Point as set forth in Table 1 above, if the Participating TO is current in meeting its milestones in Table 1 above, the Interconnection Customer</p>
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shall confirm its commitment to develop its Generating Facility.

If the Participating TO is not current in meeting its milestones as set forth in Table 1, the Interconnection Customer has the following additional options:

- 1) Continue to develop the Electric Generating Units for which the milestone has not been met (but have no obligation to do so).
- 2) Adjust its development milestones for the applicable Electric Generating Units in Table 1 above, on a day-for-day basis, as appropriate, to the Participating TO's new timetable(s).
- 3) (a) If the Participating TO is not current in meeting its milestones with respect to the First Sequence-Genesis Station, the Interconnection Customer shall have the right to (1) terminate the LGIA in its entirety, with resulting disconnection of the First Sequence-Genesis Station, and cause the refund of the Partial Termination Charge Security in full to Interconnection Customer, or (2) invoke Partial Termination of this LGIA with respect to Electric Generating Unit 2 pursuant to Article 2.4.4, provided that the Interconnection Customer has previously posted Partial Termination Charge Security for Unit 2.  
(b) If the Participating TO is not current in meeting its milestones with respect to the Second Sequence-McCoy Station, the Interconnection Customer shall have the right to invoke Partial Termination of this LGIA in accordance with Article 2.4.4 with respect to either or both Electric Generating Units within the Second Sequence-McCoy Station
- 4) Terminate this LGIA, subject to termination and Partial Termination provisions in this LGIA.
- 5) Other actions mutually agreeable to both parties.

The Interconnection Customer will provide written notification to the Participating TO of the option selected.

\* The termination provisions provided above (option 3(a) and (b)) reflect that the Interconnection Customer may invoke a Partial Termination under Section 2.4.4 with respect to those Electric Generating Units for which the Interconnection Customer has previously provided Partial Termination Charge Security, which right of Partial Termination is alternative to the Interconnection Customer's choice of termination of the entire LGIA under Article 2.3 of this LGIA.

If the Participating TO is unable to complete the Network Upgrades necessary to provide full deliverability to the entire Generating Facility, the Participating TO shall use commercially Reasonable Efforts to pursue alternatives to provide full deliverability to the entire Generating Facility.

If, within seventy-two (72) months of the Effective Date of the LGIA, the Participating TO has not (i) commenced construction of the West of Devers Network Upgrades or (ii) made commercially Reasonable Efforts to provide an alternative solution for ensuring timely Full Capacity Deliverability Status for the Generating Facility, and either (a) the Interconnection Customer is in default of a

power purchase agreement or cannot perform under a power purchase agreement as a result thereof, or (b) the Parties otherwise reasonably agree that the Interconnection Customer has been harmed as a result of the Participating TO's failure to complete the West of Devers Network Upgrades (or otherwise provide Full Capacity Deliverability Status for the Generating Facility) in a timely manner, then the Interconnection Customer shall have the right to invoke a Partial Termination of this LGIA with respect to the Electric Generating Units that the Interconnection Customer reasonably demonstrates to the other Parties it is unable to construct. If Partial Termination is exercised under the terms of the foregoing sentence, the Participating TO and the CAISO shall return the Partial Termination Charge Security applicable to such terminated Electric Generating Units to the Interconnection Customer. Any Partial Termination exercised by the Interconnection Customer, other than in accordance with this paragraph, shall result in the CAISO and the Participating TO liquidating the Partial Termination Charge Security applicable to the terminated Electric Generating Units in accordance with Article 2.4.4.5 of this LGIA.

- (e) The determination of whether the Interconnection Customer has met its milestones outlined in Table 1 under Section 14(d) above shall be at the sole discretion of the Participating TO. The determination of whether the Participating TO has met its milestones outlined in Table 1 under Section 14(d) above shall be at the sole discretion of the Interconnection Customer. If there is a dispute as to whether the Interconnection Customer or Participating TO has met a milestone required in Table 1 under Section 14(d) above, such dispute shall be resolved pursuant to Article 27 of the LGIA.
- (f) The Participating TO is under no obligation to finance other network upgrades if the Network Upgrades are modified pursuant to the GIP and such modification results in the Participating TO having to reaffirm Abandoned Plant Approval for the modified Network Upgrades. The Participating TO may seek reaffirmation of Abandoned Plant Approval for any modified Network Upgrades, at its sole discretion. If (i) the reaffirmation of Abandoned Plant Approval for the modified Network Upgrades is not received within six (6) months (or such longer period mutually agreed to by the Parties) of applying for such reaffirmation, or (ii) the Participating TO does not seek reaffirmation of Abandoned Plant Approval, the Parties agree to amend this LGIA
- (g) With the exception of Interconnection Customer exercising its Partial Termination rights pursuant to Article 2.4.4, if the Interconnection Customer does not meet any one of the milestones specified in Table 1 under Section 14(d) above (as such milestones may be adjusted due to the Interconnection Customer exercising option 2 in Table 2B above or its suspension rights under Article 5.16 of this LGIA), this failure shall be considered a Breach of this LGIA, subject to the

Default and Right to Terminate provisions under Article 17 of this LGIA and the provisions of Section 12(f) of this LGIA. Each milestone in Table 1 of Section 14(d) shall be subject to the Force Majeure provisions of this LGIA.

- (h) Notwithstanding anything to the contrary in Table 2A under Section 14(d), Interconnection Customer shall not be in Breach of this LGIA, and the Participating TO shall not have the right to terminate this LGIA, as a result of the Interconnection Customer missing a milestone in Table 1 under Section 14(d), provided that the Parties: (i) reasonably and in good faith negotiate an amendment of this LGIA to provide for Interconnection Customer-financing of the Network Upgrades; and (ii) reach agreement on such amendment within sixty (60) Calendar Days after Participating TO's notification of its having exercised option 2 or 4 under Table 2A of Appendix A.
- (i) Each Party shall provide the other Party with a monthly status report, including all supporting documentation, to verify that Party's progress on the milestones outlined in Table 1 under Section 14(d) above.
- (j) At no time will the Participating TO require payment from the Interconnection Customer for any Network Upgrades for which Abandoned Plant Approval has been obtained, provided that the costs of such Network Upgrades are incurred while the Interconnection Customer is current with meeting its development milestones pursuant to Section 14(d).

**15. Supplemental Billing and Payment Provisions:**

- (a) Pursuant to Article 12.1 of the LGIA, the Participating TO shall submit to the Interconnection Customer invoices due for the preceding month for the Distribution Upgrades Payment, Delivery Network Upgrades Payment, Interconnection Facilities Payment, Reliability Network Upgrades Payment, and Licensing Assessment Payment.
- (b) Pursuant to Article 10.5 of the LGIA, commencing on or following the Interconnection Facilities Completion Date for the applicable First Sequence and Second Sequence, each month the Participating TO will render bills to the Interconnection Customer for the applicable Interconnection Facilities Charge. The Interconnection Facilities Charge payments shall initially be based on the estimated Interconnection Facilities Cost as specified in Section 16 of this Appendix A, and shall be subject to later adjustment pursuant to Section 15.(b)(i) and 15.(b)(ii). The Interconnection Facilities Charge for the first and last month of service hereunder shall be pro-rated based on the number of Calendar Days in which service was provided during said months.
  - (i) If the amounts paid for the Interconnection Facilities Charge are less than the amounts due for the Interconnection Facilities Charge as determined from the actual recorded Interconnection Facilities Cost, Participating TO will bill

Interconnection Customer the difference between the amounts previously paid by Interconnection Customer and the amounts which would have been paid based on actual recorded costs, without interest, on the next regular billing.

- (ii) If the amounts paid for the Interconnection Facilities Charge are greater than the amounts due for the Interconnection Facilities Charge as determined from the actual recorded Interconnection Facilities Cost, Participating TO will credit Interconnection Customer the difference between the amounts previously paid by Interconnection Customer and the amounts which would have been paid based on actual recorded costs, without interest, on the next regular billing.
- (c) In the event that any portion of Participating TO's Interconnection Facilities is not complete but, at the request of Interconnection Customer, Participating TO commences Interconnection Service under this LGIA notwithstanding the incomplete facilities, Participating TO shall commence billing, and Interconnection Customer shall pay, the Interconnection Facilities Charge commencing on the date that such service commences.
- (d) In accordance with Article 5.19.3 of the LGIA, the Participating TO shall submit to the Interconnection Customer invoices due for the preceding month for the payments due for Capital Additions, if any.
- (i) For Capital Additions that are the cost responsibility of the Interconnection Customer, prior to commencing work, the Participating TO will provide at least sixty (60) Calendar Days advance written notification to the Interconnection Customer, except that, at the Participating TO's sole discretion, the Participating TO may commence the work on the Capital Additions with either shorter advance written notification or written notification after the work has commenced if the Participating TO determines that the Capital Additions are required in accordance with safety or regulatory requirements or to preserve system integrity or reliability. The written notification will include the estimated cost of the Capital Additions, and the amount of and due date for the security, if any, required to be paid by the Interconnection Customer sufficient to cover the costs for constructing, procuring and installing the Capital Additions consistent with the applicable terms of Article 11.5 of the LGIA.
  - (ii) Except as provided in Section 8(b) above, if certain Participating TO's Interconnection Facilities are removed to accommodate Capital Additions and such removal results in a change in the Interconnection Facilities Cost, the Interconnection Facilities Charge shall be adjusted as of the in-service date of such Capital Additions to reflect the change in the Interconnection Facilities Cost.

- (iii) Except as provided in Section 8(b) above, if Capital Additions result in an increase in the Interconnection Facilities Cost, then the Interconnection Facilities Charge shall be adjusted as of the in-service date of such Capital Additions to reflect the change in such costs.
- (e) As soon as reasonably practicable, but within twelve (12) months after the in-service date of any Capital Additions, the Participating TO shall provide an invoice of the final cost of the construction of the Capital Additions to the Interconnection Customer, and shall set forth such costs in sufficient detail to enable the Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. The Participating TO shall refund to the Interconnection Customer any amount by which the payment made by the Interconnection Customer for estimated costs of the Capital Additions exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice; or, in the event the actual costs of construction exceed the Interconnection Customer's payment made for the estimated costs of the Capital Additions, then the Interconnection Customer shall pay to the Participating TO any amount by which the actual costs of construction exceed the payment made by the Interconnection Customer for estimated costs within thirty (30) Calendar Days of the issuance of such final construction invoice.
- (f) If, in accordance with the removal of the Participating TO's Interconnection Facilities specified in Section 13 above, the Participating TO decides to physically remove the Participating TO's Interconnection Facilities, or any part thereof, the Participating TO shall render a bill to the Interconnection Customer for the Removal Cost. The Interconnection Customer shall pay the Removal Cost in accordance with Article 2.4.3 of the LGIA. Such billing shall initially be based on the Participating TO's estimate of the Removal Cost. Within twelve (12) months following the removal of the Participating TO's Interconnection Facilities, or any part thereof, the Participating TO shall determine the actual Removal Cost and provide the Interconnection Customer with a final invoice. The Participating TO shall refund to the Interconnection Customer any amount by which the payment by the Interconnection Customer for the estimated Removal Cost exceeds the actual Removal Cost within thirty (30) Calendar Days of the issuance of such final invoice; or, in the event the actual Removal Cost exceeds the Interconnection Customer's payment for the estimated Removal Cost, then the Interconnection Customer shall pay to the Participating TO any amount by which the actual Removal Cost exceeds the payment by the Interconnection Customer for the estimated Removal Cost within thirty (30) Calendar Days of the issuance of such final invoice.
- (g) The Interconnection Customer shall reimburse the Participating TO for all fees and charges related to the FERC fees and annual charges provided in Sections 381 and 382 of the FERC's regulations (18 C.F.R. § 381 and 382), as such regulation may from time to time be amended, that are imposed on the

Participating TO attributable to the service provided under the LGIA, or any amendments thereto. The Participating TO will render bills to the Interconnection Customer for any such fees and charges incurred since the preceding billing. As of the Effective Date, no such fees and charges have been imposed on the Participating TO attributable to the service provided under the LGIA.

- (h) Prior to the Parties execution of this LGIA, the Participating TO commenced work on the Participating TO's Reliability Network Upgrades pursuant to the Letter Agreements. In accordance with the Letter Agreements, this LGIA will supersede the Letter Agreements upon the Effective Date and Interconnection Customer's deposits made pursuant to the Letter Agreements will be credited to the amounts due under this LGIA. Following the Effective Date of this LGIA (i) the \$3,250,000 in cash deposits made by the Interconnection Customer pursuant to the Letter Agreements will be credited towards the Interconnection Facilities Payment under this Appendix A; and (ii) the \$1,120,000 letter of credit provided by Interconnection Customer pursuant to the Letter Agreements shall be applied towards the security amount due for the estimated tax liability pursuant to Section 11 of this Appendix A.
- (i) The Participating TO will apply the same procedures provided in Article 12.2 of this LGIA to the final invoice for the Licensing Assessment.

**16. Distribution Upgrades Cost, Reliability Network Upgrades Cost, Delivery Network Upgrades Cost, Interconnection Facilities Cost, and Licensing Assessment Cost Summary:**

(a) Estimated Cost:

Element-	Interconnection Facilities Cost	Distribution Upgrades Cost	Reliability Network Upgrades Cost*	Delivery Network Upgrades Cost*	One-Time Cost	Licensing Assessment Costs	Total Cost	ITCC
Participating TO's Interconnection Facilities	\$ 3,394,000				\$ 0		\$3,394,000	\$1,187,900
Distribution Upgrades		\$ 0			\$ 0		\$ 0	\$ 0
Reliability Network Upgrades (plan of service)			\$ 3,168,000		\$ 0		\$ 3,168,000	\$ 0
Reliability Network Upgrades			\$ 27,525,000		\$ 0		\$ 27,525,000	\$ 0
Delivery Network Upgrades				\$ 108,970,000	\$ 0		\$ 108,970,000	\$ 0
Licensing Assessment						\$ 130,000	\$ 130,000	\$ 0
<b>Total</b>	<b>\$ 3,394,000</b>	<b>\$ 0</b>	<b>\$ 30,693,000</b>	<b>\$ 108,970,000</b>	<b>\$ 0</b>	<b>\$ 130,000</b>	<b>\$ 143,187,000</b>	<b>\$ 1,187,900</b>

Notes: \*Network Upgrades costs are shown for information purposes only since the Participating TO has agreed to finance the Network Upgrades, subject to Section 14 of this Appendix A.

All amounts shown above are in nominal dollars based on construction schedules for each element.

(b) Actual Cost:

[TO BE INSERTED AFTER TRUE-UP OF ACTUAL COSTS (in accordance with LGIA Article 30.10)]

Element	Interconnection Facilities Cost	Distribution Upgrades Cost	Reliability Network Upgrades Cost	Delivery Network Upgrades Cost	One-Time Cost	Licensing Assessment Cost	Total Cost	ITCC
Total								



**17. Interconnection Facilities Charge:**

Interconnection Facilities Charge = Customer-Financed Monthly Rate x  
(Interconnection Facilities Cost)

Effective	Customer-Financed Monthly Rate	Estimated		Actual	
		Interconnection Facilities Cost	Interconnection Facilities Charge	Interconnection Facilities Cost	Interconnection Facilities Charge
As of the Interconnection Facilities Completion Date for the applicable sequence	0.38%	First Sequence : \$3,394,000  Second Sequence: \$ TBD*	First Sequence: \$12,897.20  Second Sequence: \$ TBD*	[to be inserted after true-up]	[to be inserted after true-up]

\* The portion of the Interconnection Facilities Cost that will be applicable to the Second Sequence, for the purpose of calculating the Interconnection Facilities Charge, will be determined based on the timing of facilities installed as required to accommodate phasing of the First and Second Sequences.

**18 Payment Schedule:**

The payment amounts shown below are based on an estimate of the monthly incurred costs for the Participating TO's Interconnection Facilities, and Distribution Upgrades.

Payment No.	Payment Due Date	Interconnection Facilities Cost	Distribution Upgrades Cost	One-Time Cost	Licensing Assessment Cost	Project Payment	ITCC
1	PAID	\$ 50,000	\$ 0	\$ 0	\$ 0	\$ 50,000	\$ 17,500
2	PAID*	\$ 750,000	\$ 0	\$ 0	\$ 0	\$ 750,000	\$ 262,500
3	PAID*	\$ 750,000	\$ 0	\$ 0	\$ 0	\$ 750,000	\$ 262,500
4	PAID*	\$ 1,700,000	\$ 0	\$ 0	\$ 0	\$ 1,700,000	\$ 595,000
5	9/1/11	\$ 0	\$ 0	\$ 0	\$ 130,000	\$ 130,000	\$ 0
6	10/1/11	\$ 100,000	\$ 0	\$ 0	\$ 0	\$ 100,000	\$ 35,000
7	11/1/11	\$ 44,000	\$ 0	\$ 0	\$ 0	\$ 44,000	\$ 15,400
<b>Total</b>		<b>\$ 3,394,000</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 130,000</b>	<b>\$ 3,524,000</b>	<b>\$ 1,187,900</b>

\* Payments 1, 2, 3 and 4 above have been credited from deposits paid pursuant to the Letter Agreements in accordance with Section 15(h) of this Appendix A.

All amounts shown above are in nominal dollars.

Interconnection Facilities Payment = (Interconnection Facilities Cost + associated One-Time Cost) = \$3,394,000

Distribution Upgrades Payment = (Distribution Upgrades Cost + associated One-Time Cost) = \$0

Licensing Assessment Payment = Licensing Assessment Costs = \$130,000

Reliability Network Upgrades Payment = (Reliability Network Upgrades Cost + associated One-Time Cost) = \$ 0 since the Participating TO has agreed to finance the Participating TO's Reliability Network Upgrades, subject to Section 14 of this Appendix A.

Delivery Network Upgrades Payment = (Delivery Network Upgrades Cost + associated One-Time Cost) = \$ 0 since the Participating TO has agreed to finance the Participating TO's Delivery Network Upgrades, subject to Section 14 of this Appendix A.

ITCC will be provided by Interconnection Customer in accordance with Appendix A, Section 11 and Section 15(h).

**Appendix B  
To LGIA**

**Milestones**

**1. The Interconnection Customer's Selected Option:** Pursuant to Article 5.1 of the LGIA, the Interconnection Customer has selected the Standard Option.

**2. Milestone Dates:**

<u>Item</u>	<u>Milestone</u>	<u>Responsible Party</u>	<u>Due Date First Sequence - Genesis Station</u>	<u>Due Date Second Sequence - McCoy Station</u>
(a)	Submit proof of insurance coverage in accordance with Article 18.3 of the LGIA	Interconnection Customer	Within ten (10) Calendar Days of the execution of this LGIA	Within ten (10) Calendar Days of the execution of this LGIA
(b)	Submittal of written authorization to proceed with design and procurement of the Participating TO's Interconnection Facilities and Network Upgrades to the Participating TO and CAISO in accordance with Article 5.5.2 of the LGIA.	Interconnection Customer	Within ten (10) Calendar Days of the Effective Date	Within ten (10) Calendar Days of the Effective Date
(c)	Submittal of second posting of Interconnection Financial Security for the Participating TO's Interconnection Facilities to the Participating TO pursuant to Section 9 of the GIP and Article 11.5 and Section 10 Appendix A of the LGIA	Interconnection Customer	Within one hundred eighty (180) Calendar Days after publication of the final Phase II Interconnection Study Report:  January 4, 2011	Within one hundred eighty (180) Calendar Days after publication of the final Phase II Interconnection Study Report:  January 4, 2011
(d)	Submittal of third posting of Interconnection Financial Security for the Participating TO's Interconnection Facilities to the Participating TO pursuant to Section 9 of the GIP and Article 11.5 and	Interconnection Customer	Within ten (10) Calendar Days of the Effective Date	Within ten Calendar Days of the Effective Date

	Section 10 of Appendix A of the LGIA			
(e)	Submittal of written authorization to proceed with construction of the Participating TO's Interconnection Facilities and Network Upgrades to the Participating TO and the CAISO pursuant to Article 5.6.3 of the LGIA	Interconnection Customer	Within thirty (30) Calendar Days of the Effective Date	Within thirty (30) Calendar Days of the Effective Date
(f)	Submittal of security for the estimated tax liability to the Participating TO pursuant to Article 5.17.3 of the LGIA	Interconnection Customer	Within thirty (30) Calendar Days of the Effective Date	Within thirty (30) Calendar Days of the Effective Date
(g)	Completion of the Participating TO's Interconnection Facilities and Network Upgrades	Participating TO	<p>Interconnection Facilities: First Sequence Genesis Station - Within thirty-eight (38) months following the effective date of the September 8, 2010 Letter Agreement*</p> <p>Reliability Network Upgrades: Within thirty-eight (38) months following the effective date of the September 8, 2010 Letter Agreement*</p> <p>Delivery Network Upgrades: Within eighty-four (84) months following the Effective Date*</p>	<p>Interconnection Facilities: Second Sequence McCoy Station – Twenty-four (24) months following Interconnection Customer's submittal of initial specifications for Interconnection Customer's Interconnection Facilities for the McCoy Station, including the Genesis McCoy 220kV Switchyard; but no sooner than thirty-eight (38) months following the effective date, of the September 8, 2010 Letter Agreement*</p> <p>Reliability</p>

				<p>Network Upgrades: Twenty-four (24) months following Interconnection Customer's submittal of initial specifications for Interconnection Customer's Interconnection Facilities for the McCoy Station, including the Genesis McCoy 220kV Switchyard; but no sooner than thirty-eight (38) months following the effective date, of the September 8, 2010 Letter Agreement*</p> <p>Delivery Network Upgrades: Within eighty-four (84) months following the Effective Date*</p>
(h)	<p>Submittal of initial specifications for the Interconnection Customer's Interconnection Facilities and Genesis McCoy Solar Project, including System Protection Facilities, to the Participating TO and the CAISO pursuant to Article 5.10.1 of the LGIA</p>	<p>Interconnection Customer</p>	<p>At least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date for the First Sequence Genesis Station</p>	<p>At least twenty-four (24) months prior to the Initial Synchronization Date for the Second Sequence McCoy Station</p>

(i)	Initial information submission which shall include the Participating TO's Transmission System information necessary to allow the Interconnection Customer to select equipment, in accordance with Article 24.2 of the LGIA	Participating TO	At least one hundred eighty (180) Calendar Days prior to Trial Operation for the First Sequence Genesis Station	At least one hundred eighty (180) Calendar Days prior to Trial Operation for the Second Sequence McCoy Station
(j)	Updated information submission by the Interconnection Customer, including manufacturer information in accordance with Article 24.3 of the LGIA	Interconnection Customer	No later than one hundred eighty (180) Calendar Days prior to Trial Operation for the First Sequence Genesis Station	No later than one hundred eighty (180) Calendar Days prior to Trial Operation for the Second Sequence McCoy Station
(k)	Review of and comment on the Interconnection Customer's initial specifications pursuant to Article 5.10.1 of the LGIA	Participating TO and CAISO	Within thirty (30) Calendar Days of the Interconnection Customer's submission of initial specifications	Within thirty (30) Calendar Days of the Interconnection Customer's submission of initial specifications
(l)	Submittal of final specifications for the Interconnection Customer's Interconnection Facilities and Genesis McCoy Solar Project, including System Protection Facilities, to the Participating TO and the CAISO as specified in Article 5.10.1 of the LGIA	Interconnection Customer	At least ninety (90) Calendar Days prior to the Initial Synchronization Date for the First Sequence Genesis Station	At least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date for the Second Sequence McCoy Station
(m)	Review of and comment on the Interconnection Customer's final	Participating	Within thirty (30) Calendar Days of the	Within thirty (30) Calendar Days of the

	specifications pursuant to Article 5.10.1 of the LGIA	TO and CAISO	Interconnection Customer's submission of final specifications	Interconnection Customer's submission of final specifications
(n)	Notification of Balancing Authority Area to the Participating TO and CAISO pursuant to Article 9.2	Interconnection Customer	At least three (3) months prior to the Initial Synchronization Date for the First Sequence Genesis Station	At least three (3) months prior to the Initial Synchronization Date for the Second Sequence McCoy Station
(o)	Performance of a complete calibration test and functional trip test of the System Protection Facilities pursuant to Article 9.7.4.6 of the LGIA	Interconnection Customer and Participating TO	At least sixty (60) Calendar Days prior to the In-Service Date	At least sixty (60) Calendar Days prior to the In-Service Date
(p)	In-Service Date	Interconnection Customer	First Sequence Genesis Station: Thirty-eight (38) months following the effective date of the September 8, 2010 Letter Agreement, or November 8, 2013	Second Sequence McCoy Station: Twenty-four (24) months following Interconnection Customer's submittal of initial specifications for Interconnection Customer's Interconnection Facilities for the McCoy Station, including the Genesis McCoy 220kV Switchyard; but no sooner than November 8, 2013 or thirty-eight (38) months following the effective date, of the September 8, 2010 Letter Agreement*

(q)	Initial Synchronization Date	Interconnection Customer	First Sequence Genesis Station: Thirty-eight (38) months following the effective date of the September 8, 2010 Letter Agreement, or November 8, 2013	Second Sequence McCoy Station: Twenty-four (24) months following Interconnection Customer's submittal of initial specifications for Interconnection Customer's Interconnection Facilities for the McCoy Station, including the Genesis McCoy 220kV Switchyard; but no sooner than November 8, 2013 or thirty-eight (38) months following the effective date, of the September 8, 2010 Letter Agreement*
(r)	Trial Operation begins	Interconnection Customer	First Sequence Genesis Station: Thirty-eight (38) months following the effective date of the September 8, 2010 Letter Agreement or November 8, 2013	Second Sequence McCoy Station: Twenty-four (24) months following Interconnection Customer's submittal of initial specifications for Interconnection Customer's Interconnection Facilities for the McCoy Station, including the Genesis McCoy 220kV



				Switchyard; but no sooner than November 8, 2013 or thirty-eight (38) months following the effective date, of the September 8, 2010 Letter Agreement*
(s)	Performance of a complete calibration test and functional trip test of the System Protection Facilities pursuant to Article 9.7.4.6 of the LGIA	Interconnection Customer and Participating TO	At least sixty (60) Calendar Days prior to the Commercial Operation Date for the First Sequence Genesis Station	At least sixty (60) Calendar Days prior to the Commercial Operation Date for the Second Sequence McCoy Station
(t)	Testing of the Participating TO's Interconnection Facilities, Distribution Upgrades and Network Upgrades and testing of the Interconnection Customer's Interconnection Facilities and Genesis McCoy Solar Project in accordance with Article 6.1 of the LGIA	Interconnection Customer and Participating TO	At least sixty (60) Calendar Days prior to the Initial Synchronization Date for the First Sequence Genesis Station	At least sixty (60) Calendar Days prior to the Initial Synchronization Date for the Second Sequence McCoy Station
(u)	Provide written approval to the Interconnection Customer for the operation of the Genesis McCoy Solar Project in accordance with Article 6.1 of the LGIA	Participating TO	At least fifteen (15) Calendar Days prior to the Initial Synchronization Date for the First Sequence Genesis Station	At least fifteen (15) Calendar Days prior to the Initial Synchronization Date for the Second Sequence McCoy Station
(v)	Commercial Operation Date	Interconnection Customer	First Sequence Genesis Station (Electric Generating Units)	Second Sequence McCoy Station: Twenty-four (24)

			1 & 2): April 1, 2014. Unit 1 Commercial Operation Date is expected to be sooner, but not later than April 1, 2014.	months following Interconnection Customer's submittal of initial specifications for Interconnection Customer's Interconnection Facilities for the McCoy Station, including the Genesis McCoy 220kV Switchyard; but no sooner than November 8, 2013 or thirty-eight (38) months following the effective date, of the September 8, 2010 Letter Agreement*
(w)	Submittal of "as-built" drawings, information and documents for the Interconnection Customer's Interconnection Facilities and the Electric Generating Units in accordance with Article 5.10.3 of the LGIA to the Participating TO and the CAISO	Interconnection Customer	Within one hundred twenty (120) Calendar Days after the Commercial Operation Date for the First Sequence Genesis Station, unless otherwise agreed	Within one hundred twenty (120) Calendar Days after the Commercial Operation Date for the Second Sequence McCoy Station, unless otherwise agreed

\* Note: The Interconnection Customer understands and acknowledges that such timeline is only an estimate and that equipment and material lead times, labor availability, outage coordination, regulatory approvals, right-of-way negotiations, or other unforeseen events could delay the actual in-service dates of the Participating TO's Interconnection Facilities, Distribution Upgrades, or Network Upgrades beyond those specified. The Participating TO shall not be liable for any cost or damage incurred by

the Interconnection Customer because of any delay in the work provided for in this LGIA.

If the Interconnection Customer suspends work pursuant to Article 5.16 of the LGIA, then all milestones for each Party set forth in this Appendix B shall be suspended during the suspension period except for the milestones requiring posting of Interconnection Financial Security for the Network Upgrades common to multiple generating stations. Upon the Interconnection Customer's request to recommence the work, the Parties shall negotiate in good faith new revised milestone dates for each milestone, taking into account the period of suspension and necessary re-studies, if required. Appendix B and any terms and conditions associated with the estimated costs and payment schedule, if necessary, shall be amended following the establishment of such revised milestone dates.

The Interconnection Customer also understands and agrees that the method of service required to interconnect the Genesis McCoy Solar Project may require re-evaluation due to the suspension of the project and changes to the Participating TO's electrical system or addition of new generation.

## Appendix C To LGIA

### Interconnection Details

1. **Generating Facility:** The Generating Facility includes, but is not limited to, all equipment and facilities comprising the proposed 500 MW generating facility near Desert Center and Blythe, California, as disclosed by the Interconnection Customer (originally FPL Energy, LLC which changed to Desert Center Blythe, LLC and subsequently to NextEra Desert Center Blythe, LLC) in its Interconnection Request dated May 24, 2007, as was subsequently amended during the Interconnection Study process, which includes the Genesis Station, a 250 MW solar thermal generating facility near Desert Center, California and the McCoy Station, a 250 MW photovoltaic generating facility near Blythe, California. The Genesis Station consists of two (2) Siemens steam turbine generators rated at 167 MVA each (but limited to a maximum output of 125 MW each), two (2) 220/13.8kV 150MVA step-up transformers with 9% impedance on a 90 MVA base, meters and metering equipment, and appurtenant equipment. The McCoy Station consists of solar panels and DC-AC inverters, one (1) 220/34.5kV 294 MVA step-up transformer with 8% impedance on a 201 MVA base, meters and metering equipment, and appurtenant equipment (Genesis Station & McCoy Station together, the Generating Facility or the "Genesis McCoy Solar Project"). The Genesis McCoy Solar Project is proposed to be a Phased Generating Facility to be constructed in two sequences, with the Genesis Station proposed to be constructed in the First Sequence and the McCoy Station proposed to be constructed in the Second Sequence as further described in Appendix A.
2. **Interconnection Customer Operational Requirements.**
  - (a) Pursuant to Article 9.4 of the LGIA, the Interconnection Customer shall operate the Genesis McCoy Solar Project and the Interconnection Customer's Interconnection Facilities in accordance with the CAISO Tariff, NERC and the Applicable Reliability Council requirements, and Applicable Reliability Standards.
  - (b) The Genesis McCoy Solar Project shall be operated so as to prevent or protect against the following adverse conditions on the Participating TO's electric system: inadvertent and unwanted re-energizing of a utility dead line or bus; interconnection while out of synchronization; overcurrent; voltage imbalance; ground faults; generated alternating current frequency outside permitted safe limits; power factor or reactive power outside permitted limits; and abnormal waveforms.
3. **Interconnection Principles:**
  - (a) This LGIA provides for interconnection of a total capacity of 500 MW,

resulting from the interconnection of the Genesis McCoy Solar Project, as described in Section 1 of this Appendix C. The Interconnection Customer acknowledges that if the Interconnection Customer wishes to increase the amount of interconnection capacity provided pursuant to this LGIA, the Interconnection Customer shall be required to submit a new Interconnection Request in accordance with the terms and conditions of the CAISO Tariff.

- (b) The costs associated with any mitigation measures required to third party transmission systems resulting from the interconnection of the Genesis McCoy Solar Project to the Participating TO's electrical system are not reflected in this LGIA. The Participating TO shall have no responsibility to pay costs associated with any such mitigation measures. If applicable, Interconnection Customer shall enter into an agreement with such third parties to address any required mitigation in accordance with Section 12.4 of the GIP.
- (c) In the event the Participating TO's Interconnection Facilities are utilized to provide retail service to the Interconnection Customer in addition to the wholesale Interconnection service provided herein, and the Interconnection Customer fails to make payment for such retail service in accordance with the Participating TO's applicable retail tariffs, the Participating TO's Interconnection Facilities may be removed from service to the Interconnection Customer, subject to the notice and cure provisions of such retail tariffs, until payment is made by the Interconnection Customer pursuant to such retail tariffs.
- (d) Review by the Participating TO of the electrical specifications, design, construction, operation, or maintenance of the Genesis McCoy Solar Project or the Interconnection Customer's Interconnection Facilities shall not constitute any representation as to the economic or technical feasibility, operational capability, or reliability of such facilities. The Interconnection Customer shall in no way represent to any third party that any such review by the Participating TO of such facilities, including, but not limited to, any review of the design, construction, operation, or maintenance of such facilities by the Participating TO, is a representation by the Participating TO as to the economic or technical feasibility, operational capability, or reliability of the Genesis McCoy Solar Project or the Interconnection Customer's Interconnection Facilities.
- (e) Should the CAISO in the future permit multiple large generator interconnection agreements for a Generating Facility having multiple Electric Generating Units with the same single Point of Interconnection, upon Interconnection Customer's request for comparable, stand alone large generator interconnection agreements for the Genesis Station and the McCoy Station, the Parties agree to work cooperatively and expeditiously to comply with such request.

- (f) The Interconnection Customer shall complete and receive approval for all environmental impact studies necessary for the construction, operation, and maintenance of the Participating TO's Interconnection Facilities, Distribution Upgrades and Participating TO's Reliability Network Upgrades described in Appendix A of this LGIA. Interconnection Customer shall include such facilities in all such environmental impact studies, where applicable. Interconnection Customer shall provide the results of such studies and approvals to Participating TO for use in Participating TO's application(s) to obtain the regulatory approvals required to be obtained by Participating TO for the construction, operation, and maintenance of the Participating TO's Interconnection Facilities, Distribution Upgrades and Reliability Network Upgrades described in Appendix A of this LGIA.
- (g) The Interconnection Customer is responsible for all costs associated with any necessary relocation of any Participating TO facilities as a result of the Genesis McCoy Solar Project and acquiring all property rights necessary for the Interconnection Customer's Interconnection Facilities, including those required to cross the Participating TO's facilities and property. The relocation of Participating TO facilities or use of Participating TO property rights shall only be permitted upon written agreement between Participating TO and the Interconnection Customer. Any proposed relocation of Participating TO facilities or use of Participating TO property rights may require a study and/or evaluation, the cost of which would be borne by the Interconnection Customer, to determine whether such use may be accommodated. The terms and conditions of any such use of Participating TO facilities or property rights would be the subject of a separate agreement and any associated costs to the Interconnection Customer would not be considered a Network Upgrade and would not be refundable to the Interconnection Customer.
- (h) This LGIA does not address any requirements for standby power or temporary construction power that the Genesis McCoy Solar Project may require prior to the in-service date of the Interconnection Facilities. Should the Genesis McCoy Solar Project require standby power or temporary construction power from Participating TO prior to the in-service date of the Interconnection Facilities, the Interconnection Customer is responsible to make appropriate arrangements with Participating TO to receive and pay for such retail service.

#### **4. Cluster Study Group:**

- (a) The Genesis McCoy Solar Project participated in the CAISO's Eastern Bulk System Cluster for purposes of assessing impacts to the Participating TO's electrical system and that portion of the Participating TO's electrical system that constitutes the CAISO Controlled Grid.

## 5. Interconnection Operations:

- (a) The Interconnection Customer shall cause the Genesis McCoy Solar Project to participate in any SPS required to prevent thermal overloads and unstable conditions resulting from outages. Such participation shall be in accordance with applicable FERC regulations, and CAISO Tariff provisions and protocols. The Interconnection Customer will not be entitled to any compensation from the Participating TO, pursuant to the LGIA, for loss of generation output when (i) the Genesis McCoy Solar Project generation is reduced or tripped off-line due to implementation of the SPS; or (ii) such generation output is restricted in the event the SPS becomes inoperable. Pursuant to Good Utility Practice, the Participating TO will provide the Interconnection Customer advance notice of any required SPS beyond that which has already been identified in the Phase II Interconnection Study and this LGIA.
- (b) The Interconnection Customer shall cause the Genesis McCoy Solar Project to participate in CAISO congestion management in accordance with CAISO Tariff.
- (c) Following outages of the Interconnection Facilities or the Genesis McCoy Solar Project, the Interconnection Customer shall not energize the Genesis McCoy Solar Project for any reason without specific permission from the Participating TO's and the CAISO's operations personnel. Such permission shall not be unreasonably withheld.
- (d) The Interconnection Customer shall maintain operating communications with the Participating TO's designated switching center. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, and levels of operating voltage and reactive power.
- (e) The Interconnection Customer elected for the Genesis McCoy Solar Project in its Interconnection Request to have Full Capacity Deliverability Status as such term is defined in the CAISO Tariff. Interconnection Customer acknowledges and understands that, until the Participating TO's Delivery Network Upgrades are constructed and placed in service, the Genesis McCoy Solar Project will have Energy-Only Deliverability Status as such term is defined in the CAISO Tariff unless partial Full Capacity Delivery Status becomes available and is allocated to the Interconnection Customer.
- (f) Additional operational studies may be performed by the Participating TO on an as needed basis and at the Interconnection Customer's expense to confirm if any of the circuit breaker upgrades or replacements identified in the Phase II Interconnection Study as being triggered by queued ahead projects are required to be advanced in order to accommodate interconnection of the

Genesis McCoy Solar Project. In the event that it is determined by the Participating TO that any such upgrades or replacements are required to be advanced in order to accommodate interconnection of the Genesis McCoy Solar Project, such advancement shall be addressed in accordance with Section 12.2.2 of the GIP.

- (g) In accordance with Article 5.12 of the LGIA, the Interconnection Customer and Participating TO shall execute any necessary supplemental agreements, as determined by the Participating TO, to effectuate and record such easement(s) which provides the Participating TO unrestricted 24 hour access to Participating TO's Interconnection Facilities located on the Interconnection Customer's side of the Point of Change of Ownership for construction, operation, and maintenance.
- (h) This LGIA assumes, based on the Interconnection Customer's initial plans, that interconnection of the Second Sequence McCoy Station will coincide with the completion date of the Delivery Network Upgrades. However, under certain conditions, the Interconnection Customer may elect to interconnect the Second Sequence McCoy Station sooner than its initial plans and prior to the Delivery Network Upgrades completion date.

In the event the Interconnection Customer, with appropriate notice to Participating TO and the CAISO, elects to proceed with its Second Sequence McCoy Station, in addition to its First Sequence Genesis Station, prior to the planned in-service date of the Participating TO's Delivery Network Upgrades (specifically that portion of the Participating TO's Delivery Network Upgrades that is the second AA bank at Colorado River Substation), then Interconnection Customer may be responsible, as determined by the Participating TO and the CAISO, for advancing the capacitor bank (Capacitor Bank) at Colorado River Substation that is a planned reliability network upgrade for generator interconnections in the CAISO's Queue Cluster 2. Such determination will be made by the Participating TO and the CAISO at the time the Interconnection Customer notifies the Participating TO and the CAISO in accordance with Appendix B of this LGIA that it intends to proceed with connection of the Second Sequence McCoy Station prior to the Participating TO's Delivery Network Upgrades completion date. If the Participating TO and the CAISO determine, based on the status of planned generator interconnections and associated upgrades at Colorado River Substation, that the Capacitor Bank at Colorado River Substation is required to accommodate the earlier Second Sequence McCoy Station in-service date, then the Interconnection Customer shall pay the Participating TO, unless otherwise provided for in Section 12.2 of the GIP, to advance the engineering, design, procurement and installation of the Capacitor Bank. The Participating TO will refund the cost of such work to the Interconnection Customer on the earlier of (i) the date the Capacitor Bank would have otherwise been installed to accommodate the subsequent generator interconnections; or (ii) the date



that is determined in accordance with Article 11.4.1 of this LGIA. For information purposes, the Capacitor Bank has been identified in the Queue Cluster 2 Phase I Interconnection Study Report as one (1) 150 MVAR Capacitor Bank to be connected at the Colorado River Substation 500kV Bus, and is estimated to cost approximately \$26,604,000. The Capacitor Bank scope of work and cost estimate is subject to change based on the results of the Queue Cluster 2 Phase II Interconnection Study.

6. **Compliance with Applicable Reliability Standards:** The Interconnection Customer shall comply with all Applicable Reliability Standards for its Interconnection Customer's Interconnection Facilities and the Genesis McCoy Solar Project. The Participating TO will not assume any responsibility for complying with mandatory reliability standards for such facilities and offers no opinion whether the Interconnection Customer must register with NERC. If required to register with NERC, the Interconnection Customer shall be responsible for complying with all Applicable Reliability Standards for its Interconnection Customer's Interconnection Facilities and the Genesis McCoy Solar Project up to the Point of Change of Ownership as described in Section 5 of Appendix A of this LGIA.
  
7. **Interconnection Customer Ownership Structure:** The Parties acknowledge and agree that the Interconnection Customer may elect to structure the legal ownership of the entire Generating Facility referenced in this LGIA, known as the Genesis McCoy Solar Project, in order to divide its ownership into two separate legal entity owners so long as each entity owns one or more discrete Electric Generating Unit(s) and other physical components of the entire Generating Facility in a manner that is consistent with the "Recitals to Appendix A." Each of these legal entities, which are Affiliates as of the execution of this LGIA, but which are not required to be Affiliates, shall be an owner of the Interconnection Customer and shall own a pro-rata share of the Interconnection Customer in proportion to the amount of the entire Genesis McCoy Solar Project's electrical capacity that the Affiliate controls (each an "Affiliate Owner", jointly the "Affiliate Owners"). The Parties further acknowledge and agree that:
  - (i) the ownership structure of the Genesis McCoy Solar Project shall be detailed in the Interconnection Customer's limited liability company agreement (the "Operating Agreement") and the shared facilities agreement ("Shared Facilities Agreement") between the Interconnection Customer and the Affiliate Owners that shall contain the terms and conditions listed below in subsections (a) through (d) and which shall be subject to the approval of the Participating TO and the CAISO; and
  - (ii) each of the Affiliate Owners of the Interconnection Customer shall be required to have executed an assignment and assumption agreement by which (a) Interconnection Customer assigns to each Affiliate Owner Interconnection Customer's rights to Interconnection Service under this LGIA in respect of the Electric Generating Units owned and operated by or expected to be owned and operated by such Affiliate Owner and (b) each

Affiliate Owner agrees, to the extent of the Electric Generating Units owned and operated by or expected to be owned and operated by such Affiliate Owner, to both (1) be bound by and subject to the obligations and responsibilities of the Interconnection Customer under this LGIA with respect to the rights to Interconnection Service assumed by such Affiliate Owner and (2) take such actions as may be required (or refrain from taking such action) to cause the Interconnection Customer to meet such obligations and responsibilities (such agreement to be referred to herein as the "Assignment Agreement"). The Assignment Agreement shall be in a form subject to approval of the CAISO and the Participating TO.

- (a) The number of Affiliate Owners in the Generating Facility shall not exceed the number of sequences or Electric Generating Units designated by the Interconnection Customer for purposes of Partial Termination.
- (b) The Interconnection Customer shall serve as agent for its Affiliate Owners who receive the benefits and assume the obligations and responsibilities in connection with the Interconnection Customer's rights to Interconnection Service under this LGIA; provided however, the Affiliate Owners are not parties to this LGIA and such benefits, obligations and responsibilities shall be derived solely by and through the Interconnection Customer. The Affiliate Owners shall receive the benefits of the Interconnection Customer's rights to Interconnection Service and be subject to the Interconnection Customer's obligations and responsibilities only to the extent of Interconnection Customer's rights, obligations and responsibilities as are provided for under this LGIA, except to the extent that such rights, obligations and responsibilities may be limited, as provided in paragraph (c) below. Additionally, such rights, obligations and responsibilities shall exist only for such period of time as the Interconnection Customer is a Party to this LGIA. No provision in the Shared Facilities Agreement, the Operating Agreement or this LGIA shall operate or be construed so as to:
  - i. relieve the Interconnection Customer of its obligations to the Participating TO or the CAISO under this LGIA;
  - ii. require either the Participating TO or the CAISO to communicate directly with, or look to, Affiliate Owners with respect to the Interconnection Customer's performance under this LGIA;
  - iii. entitle the Affiliate Owners to receive any notice under the LGIA from the Participating TO or the CAISO; or,
  - iv. provide to the Affiliate Owners any rights or benefits, or subject it to any obligations or responsibilities under the LGIA other than by or through the Interconnection Customer, as provided in and as limited by this paragraph.
- (c) The Operating Agreement shall require each Affiliate Owner to contribute to the Interconnection Customer (i) its pro rata share of any and all amounts the Interconnection Customer is required to pay under the LGIA, including but not limited to, the Participating TO Interconnection Facilities

Charge and any ancillary charges incurred directly from the Participating TO or CAISO and (ii) the amount of any NERC penalties incurred by Interconnection Customer as a result of the actions or omissions of such Affiliate Owner. In addition the Participating TO and the CAISO, as third party beneficiaries in connection with the LGIA, shall be granted certain rights to enforce those obligations as third party beneficiaries of the Shared Facilities Agreement that are intended for the benefit of the Participating TO and the CAISO as Parties to the LGIA.

- (d) In executing this LGIA, the Participating TO and CAISO grant their consent to the terms in the form of Assignment Agreement, Operating Agreement and Shared Facilities Agreement, provided the form of each such agreement remains substantially the same as those provided to the Participating TO and CAISO, and if such terms materially change, future approval by the Participating TO and CAISO shall not be unreasonably withheld. The Assignment Agreement, Operating Agreement and Shared Facilities Agreement shall be fully executed by the parties with thirty (30) Calendar Days of the Effective Date of this LGIA. The failure to execute such agreements by this date shall be considered a Breach under this LGIA.
- (e) Interconnection Customer shall agree not to amend or modify the Operating Agreement or the Shared Facilities Agreement in any material respect without the prior written consent of the Participating TO and CAISO, which consent shall not be unreasonably withheld.
- (f) The Shared Facilities Agreement shall require the Interconnection Customer to communicate with its Affiliate Owners in order to ensure that all requirements of this LGIA are performed by the Interconnection Customer. The Shared Facilities Agreement shall require further that each Affiliate Owner comply with the Interconnection Customer's instructions, in order to ensure that the Interconnection Customer complies with the provisions of this LGIA. No failure by an Affiliate Owner to comply with any instructions from the Interconnection Customer shall excuse the Interconnection Customer from performance of any of its obligations under this LGIA. The Shared Facilities Agreement shall provide that each Affiliate Owner has both the legal authority and the operational abilities to satisfy the obligations under the Shared Facilities Agreement.
- (g) The Interconnection Customer and each of the Affiliate Owners shall agree in the Shared Facilities Agreement not to assign any claims of benefit, under that Shared Facilities Agreement, to any third party. However, each of the Interconnection Customer and the Affiliate Owners shall have the right to assign for collateral security purposes, for financing of the Genesis McCoy Solar Project, any of that Affiliate Owner's respective rights and obligations under the Shared Facilities Agreement, Assignment Agreement and the Operating Agreement.

**Appendix D  
To LGIA**

**Security Arrangements Details**

Infrastructure security of CAISO Controlled Grid equipment and operations and control hardware and software is essential to ensure day-to-day CAISO Controlled Grid reliability and operational security. FERC will expect the CAISO, all Participating TOs, market participants, and Interconnection Customers interconnected to the CAISO Controlled Grid to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

The Interconnection Customer shall meet the requirements for security implemented pursuant to the CAISO Tariff, including the CAISO's standards for information security posted on the CAISO's internet web site at the following internet address: <http://www.aiso.com/pubinfo/info-security/index.html>.

**Appendix E  
To LGIA**

**Commercial Operation Date**

[This Appendix E sets forth a form of letter to be provided by the Interconnection Customer to the CAISO and Participating TO to provide formal notice of the Commercial Operation of an Electric Generating Unit.]

**[Date]**

Mr. Stephen Rutty  
Director, Grid Assets  
California Independent System Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630

Mr. Robert Kott  
Manager, Model and Contract Implementation  
California Independent System Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630

Mr. William Law  
Manager, Grid Contracts Management  
Southern California Edison Company  
P. O. Box 800  
2244 Walnut Grove Avenue  
Rosemead, California 91770

Re: \_\_\_\_\_ Electric Generating Unit

Dear Messrs. Rutty, Kott, and Law:

On **[Date]** NextEra Desert Center Blythe, LLC has completed Trial Operation of Unit No. \_\_\_\_\_. This letter confirms that NextEra Desert Center Blythe, LLC commenced Commercial Operation of Unit No. \_\_\_\_\_ at the Electric Generating Unit, effective as of **[Date plus one day]** and that NextEra Desert Center Blythe, LLC provided the CAISO's operations personnel advance notice of its intended Commercial Operation Date no less than five (5) Business Days prior to that date.

Thank you.

**[Signature]**

**[NextEra Desert Center Blythe, LLC Representative]**

cc: Linda Wright

**Appendix F  
To LGIA**

**Addresses for Delivery of Notices and Billings**

**Notices:**

General Notices:

CAISO	Participating TO	Interconnection Customer
Ms. Linda Wright 250 Outcropping Way Folsom, CA 95630	Manager, Grid Contracts Management P. O. Box 600 Rosemead, CA 91770	Cindy Tindell Vice President Business Management 700 Universe Blvd. Juno Beach, FL 33408

**2. Operating Communications and Notifications:**

The CAISO, Participating TO and the Interconnection Customer shall provide for operating communications through their respective designated representatives as follows:

The Parties agree to exchange the following information ten (10) Calendar Days prior to the Initial Synchronization Date:

CAISO	Participating TO	Interconnection Customer [Customer Name]
CAISO Real Time Desk/24 Hour Telephone:	Grid Control Center/24 Hour Telephone:	*Operator Name and/or Title: Control Room Operator *24 Hour Telephone:
Alternate Phone:		*Operation Center Fax. No.: *E-mail:

**3. Operational Matters, Force Majeure, and Outage Notices:**

CAISO	Participating TO	Interconnection Customer
Name: Phone:	Name/Title: Phone:	Name/Title: Phone:

**4. For Emergencies:**

CAISO	Participating TO	Interconnection Customer
Name:	Name/Title:	Name/Title:

Phone:	Phone:	Phone:
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5. Billing and Payments:

CAISO	Participating TO	Interconnection Customer
Finance Dept. Mr. Dennis Estrada 250 Outcropping Way Folsom, CA 95630	Manager, Grid Contracts Management P. O. Box 600 Rosemead, CA 91770	Matt Schafer Vice President Business Management 700 Universe Blvd. Juno Beach, FL 33408

6. Alternate Forms of Delivery of Notices (telephone, facsimile or e-mail):

CAISO	Participating TO	Interconnection Customer
<a href="mailto:lwright@caiso.com">lwright@caiso.com</a>	Manager, Grid Contracts Management Tel: (626) 302-9640 Fax: (626) 302-1152	Keith Jenkins Executive Director Business Management 700 Universe Blvd. Juno Beach, FL 33408  Phone: 561-304-5162 Email: <a href="mailto:Keith.Jenkins@Nexteraenergy.com">Keith.Jenkins@Nexteraenergy.com</a>

**Appendix G  
To LGIA**

**Interconnection Customer's Proportional Share of Costs of Network Upgrades for  
Applicable Project Group**

Type	Upgrades	Needed For	Cost factor	Cost Share (\$1000)
Delivery	West of Devers 220kV upgrades: Reconductoring four 230kV lines of West of Devers.	Normal and contingency overload	21.35%	\$94,297
Delivery	Expand Colorado River (CR) Substation: add the second 500/220 AA transformer banks, rated at 1120 MVA as normal rating.	Normal overload on the first Colorado River 500/230 kV transformer	30.30%	\$14,673
Reliability	Expand Colorado River (CR) Substation: Build CR 500/220 kV Substation with a new 500/220 AA transformer banks, rated at 1120 MVA as normal rating.	Interconnect the new generators at Colorado River 230 kV bus	30.30%	\$18,660
Reliability	Loop-in the Red Bluff (RB) 500/220 kV Substation into the Colorado - Devers 500 kV #2 line	To balance power flow on DPV 1 and DPV 2 lines	23.26%	\$7,505
Reliability	Replace the line raiser on Mira Loma – Vista 220 kV #2 line to 3500amps or higher	Emergency overload in off-peak reliability study	22.73%	\$26
Reliability	Develop a SPS to trip 1400MW TC2 generation to mitigate dynamic voltage violations under the N-2 of Devers – RedBluff No.1 and No.2 500 kV lines.	Dynamic voltage violation under N-2 contingency	23.26%	\$187
Reliability	Develop a SPS to trip 500 MW TC2 generation at the Colorado River 500/220 kV substation to mitigate the overload by on one AA bank for the loss of another AA bank (T-1 contingency)	Emergency overload	30.30%	\$1,147
Plan of Service Reliability Network Upgrade	Substation, Power System Control	Direct Assigned Network upgrades needed to enable interconnection.	100.00%	\$3,168
			<b>Total:</b>	<b>\$139,663</b>

Note: The amounts shown above are in nominal dollars.



## **Appendix H To LGIA**

### **INTERCONNECTION REQUIREMENTS FOR AN ASYNCHRONOUS GENERATING FACILITY**

Appendix H sets forth interconnection requirements specific to all Asynchronous Generating Facilities. Existing individual generating units of an Asynchronous Generating Facility that are, or have been, interconnected to the CAISO Controlled Grid at the same location are exempt from the requirements of this Appendix H for the remaining life of the existing generating unit. Generating units that are replaced, however, shall meet the requirements of this Appendix H.

#### **A. Technical Requirements Applicable to Asynchronous Generating Facilities**

##### **i. Low Voltage Ride-Through (LVRT) Capability**

An Asynchronous Generating Facility shall be able to remain online during voltage disturbances up to the time periods and associated voltage levels set forth in the requirements below.

1. An Asynchronous Generating Facility shall remain online for the voltage disturbance caused by any fault on the transmission grid, or within the Asynchronous Generating Facility between the Point of Interconnection and the high voltage terminals of the Asynchronous Generating Facility's step up transformer, having a duration equal to the lesser of the normal three-phase fault clearing time (4-9 cycles) or one-hundred fifty (150) milliseconds, plus any subsequent post-fault voltage recovery to the final steady-state post-fault voltage. Clearing time shall be based on the maximum normal clearing time associated with any three-phase fault location that reduces the voltage at the Asynchronous Generating Facility's Point of Interconnection to 0.2 per-unit of nominal voltage or less, independent of any fault current contribution from the Asynchronous Generating Facility.
2. An Asynchronous Generating Facility shall remain online for any voltage disturbance caused by a single-phase fault on the transmission grid, or within the Asynchronous Generating Facility between the Point of Interconnection and the high voltage terminals of the Asynchronous Generating Facility's step up transformer, with delayed clearing, plus any subsequent post-fault voltage recovery to the final steady-state post-fault voltage. Clearing time shall be based on the maximum backup clearing time associated with a single point of failure (protection or breaker failure) for any single-phase fault location that reduces any phase-to-ground or phase-to-phase voltage at the Asynchronous

Generating Facility's Point of Interconnection to 0.2 per-unit of nominal voltage or less, independent of any fault current contribution from the Asynchronous Generating Facility.

3. Remaining on-line shall be defined as continuous connection between the Point of Interconnection and the Asynchronous Generating Facility's units, without any mechanical isolation. Asynchronous Generating Facilities may cease to inject current into the transmission grid during a fault.
4. The Asynchronous Generating Facility is not required to remain on line during multi-phased faults exceeding the duration described in Section A.i.1 of this Appendix H or single-phase faults exceeding the duration described in Section A.i.2 of this Appendix H.
5. The requirements of this Section A.i. of this Appendix H do not apply to faults that occur between the Asynchronous Generating Facility's terminals and the high side of the step-up transformer to the high-voltage transmission system.
6. Asynchronous Generating Facilities may be tripped after the fault period if this action is intended as part of a special protection system.
7. Asynchronous Generating Facilities may meet the requirements of this Section A.i of this Appendix H through the performance of the generating units or by installing additional equipment within the Asynchronous Generating Facility, or by a combination of generating unit performance and additional equipment.
8. The provisions of this Section A.i of this Appendix H apply only if the voltage at the Point of Interconnection has remained within the range of 0.9 and 1.10 per-unit of nominal voltage for the preceding two seconds, excluding any sub-cycle transient deviations.

The requirements of this Section A.i in this Appendix H shall not apply to any Asynchronous Generating Facility that can demonstrate to the CAISO a binding commitment, as of July 3, 2010, to purchase inverters for thirty (30) percent or more of the Generating Facility's maximum Generating Facility Capacity that are incapable of complying with the requirements of this Section A.i in this Appendix H. The Interconnection Customer must include a statement from the inverter manufacturer confirming the inability to comply with this requirement in addition to any information requested by the CAISO to determine the applicability of this exemption.

## **ii. Frequency Disturbance Ride-Through Capability**

An Asynchronous Generating Facility shall comply with the off nominal frequency requirements set forth in the WECC Under Frequency Load Shedding Relay Application Guide or successor requirements as they may be amended from time to time.

### **iii. Power Factor Design Criteria(Reactive Power)**

An Asynchronous Generating Facility shall operate within a power factor within the range of 0.95 leading to 0.95 lagging, measured at the Point of Interconnection as defined in this LGIA in order to maintain a specified voltage schedule, if the Phase II Interconnection Study shows that such a requirement is necessary to ensure safety or reliability. The power factor range standard can be met by using, for example, power electronics designed to supply this level of reactive capability (taking into account any limitations due to voltage level, real power output, etc.) or fixed and switched capacitors, or a combination of the two, if agreed to by the Participating TO and CAISO. The Interconnection Customer shall not disable power factor equipment while the Asynchronous Generating Facility is in operation. Asynchronous Generating Facilities shall also be able to provide sufficient dynamic voltage support in lieu of the power system stabilizer and automatic voltage regulation at the generator excitation system if the Phase II Interconnection Study shows this to be required for system safety or reliability.

### **iv. Supervisory Control and Data Acquisition (SCADA) Capability**

An Asynchronous Generating Facility shall provide SCADA capability to transmit data and receive instructions from the Participating TO and CAISO to protect system reliability. The Participating TO and CAISO and the Asynchronous Generating Facility Interconnection Customer shall determine what SCADA information is essential for the proposed Asynchronous Generating Facility, taking into account the size of the plant and its characteristics, location, and importance in maintaining generation resource adequacy and transmission system reliability.

### **v. Power System Stabilizers (PSS)**

Power system stabilizers are not required for Asynchronous Generating Facilities.

## EXHIBIT S *Actual Availability Report*

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

1. Availability Workbook.

Seller shall:

- (a) 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
- (b) Electronically send the Availability Workbook to an address provided by SCE.

The Actual Availability Report must reflect the Actual Available Capacity as measured by Seller's SCADA equipment.

2. Log of Availability.

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

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

**ATTACHMENT 1**

*Actual Availability Report*

*(Form of Microsoft Excel File Attachment to E-mail Notice)*

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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***Meteorological Station Specifications*

Pursuant to Section 3.08(f), Seller shall install and maintain a minimum of one (1) stand-alone meteorological equipment station for each one (1) square mile (or portion thereof) of the Site. Each station shall be equipped with instruments and equipment that meet or exceed those specifications set forth in the CAISO's PIRP/EIRP protocol and are compatible with the requirements of SCE. SCE and Seller acknowledge that SCE may update this Exhibit T from time to time in order to accommodate industry standards, the CAISO PIRP/EIRP protocol and the needs of SCE.

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

Seller shall be required to maintain the meteorological station in accordance with Prudent Electrical Practices and equipment specifications. Seller shall perform yearly calibrations of all instruments. In addition, any solar irradiance sensor must be cleaned daily or after storm events, following manufacturers recommended cleaning procedures.

1. Equipment Stations.

- (a) The equipment stations shall be comprised of the following:
  - (i) One (1) heated wind sensor;
  - (ii) One (1) air temperature sensor;
  - (iii) One (1) relative humidity sensor;
  - (iv) One (1) barometric pressure sensor (with DCP sensor);
  - (v) One (1) total global irradiation sensor for each collector plane orientation in the Site. The sensor(s) are oriented at the same inclination and aspect as the collector plane(s);
  - (vi) One (1) total global radiation sensor horizontal to the ground plane (only 1 such sensor shall be required under this Agreement); and
  - (vii) One (1) diffuse radiation sensor (only 1 such sensor shall be required under this Agreement).
- (b) In addition, Seller shall report:
  - (i) Solar altitude angle;
  - (ii) Solar azimuth angle; and
  - (iii) Precipitation.
- (c) All sensors shall be set at a height location representing the height from ground level of the solar collection point, for example, two (2) meters above ground level.

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

3. Attributes of Equipment Station Locations.

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

4. Communication.

Seller shall communicate meteorological data to SCE via a system consistent with SCE's employed methods at the time of installation. The equipment installed will need to be approved by SCE.

The satellite communication requires an unencumbered south-by-southwest view of the sky for antenna placement. Weather station data will be transmitted to SCE consistent with the industry standard practices at the time of installation.

5. Minimum Equipment Requirements.

SCE currently requires equipment with quality levels, 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 before installation at the Site.

(a) MAWS301 AWS System.

- (i) MAWS301 Basic Assembly for MAWS301 Automatic Weather Station, including following modules and functions:
  - QML201 AWS Logger with 1.7 MB Flash memory for data logging
  - QBR101B Battery regulator
  - ENC542PLM Equipment enclosure with backup battery mounting accessories and internal wiring
  - Bottom plate with signal connectors for sensors and peripheral equipment
  - MAWS LIZARD Set-up software
  - MAWS Terminal software
- (ii) ENC542SHIELD Radiation Shield for MAWS301 enclosure
- (iii) QMZ101 Terminal/maintenance cable for MAWS
- (iv) QMBATT12 Back-up battery - 12 Ah/12V, installed in MAWS enclosure, includes wiring

(b) Sensors.

- (i) QMT110 Air temperature sensor with 10 m cable and connector
  - DTR502P22 Radiation shield for QMT110 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)
- (ii) QMT103 Air temperature sensor with 5-m cable and connector
  - 212417 Extension cables, 25m, shielded, 5-pin F-M connector for QMT103 sensor
  - DTR502P22 Radiation shield for QMT103 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)
- (iii) PMT16A Barometric pressure sensor installed within the MAWS301 enclosure
- (iv) M301-WS425STDH Heated Ultrasonic Wind Sensor with RS485 & power output cable, sensor mounting on 60 mm diameter pole/mast and 36 VDC power supply
- (v) HMT 100 humidity and temperature sensor
- (vi) Model RSR-2, Rotating Shadowband Radiometer System from Irradiance Inc. for site global horizontal and diffuse irradiance
- (vii) Kipp and Zonen Model CMP-11, thermopile pyranometer mounted in the plane of the solar array for each solar array orientation

(c) Powering.

MCP150-M3-115 Mains (AC) power supply, installed in enclosure (ENC542PLM), including wiring and surge arrestors for 115 VAC

(d) Communication.

- (i) DSI485ASET48-M3 Isolated RS-485 module - 2 wire connection, including extra surge arrestors for both lines, installed in MAWS enclosure communications from logger to WS425 sensors
- (ii) DME421-M3 Ethernet interface serial port to VSAT transmitter. Module mounted within MAWS enclosure
- (iii) VSAT Hardware, VSAT transmitter, cables with connectors, testing of each site, antenna positioners, mounting hardware. Installation at each site should include program fee for VSAT module

(e) Install Accessories.

- (i) APPK-60SET Mast mounting for MAWS enclosure on a 50-60 mm diameter pole/mast/tower



- (ii) QSA124PT Surge Arrestor for QMT103/110 Temp sensor lines (4-wire)
- (iii) #010411 Shielded RS485 cabling from MAWS301 to WS425STDH - 10m cables
- (iv) QSA224DC Surge Arrestor for RS485 lines, wind sensors at 10m

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\*\*\* End of EXHIBIT T \*\*\*

**EXHIBIT U**  
*Notice of SCE's Rights*

**RECORDING REQUESTED BY**

**AND WHEN RECORDED MAIL TO:**

Southern California Edison

2244 Walnut Grove Avenue  
Rosemead, California 91770

Attention: SCE Law Department, Manager of  
Power Procurement Section

APN: \_\_\_\_\_

*(Space Above for Recorder's Use Only)*

**NOTICE OF SCE's RIGHTS**

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

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

RAP ID #5494, McCoy Solar, LLC

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

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

*[Signatures are on the following page]*

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

<p><b>MCCOY SOLAR, LLC</b></p> <p>a Delaware limited liability company</p>	<p><b>SOUTHERN CALIFORNIA EDISON COMPANY,</b></p> <p>a California corporation.</p>
<p>By: _____</p> <p><i>Its:</i> _____</p> <p>Date: _____</p>	<p>By: _____</p> <p><i>Its:</i> _____</p> <p>Date: _____</p>

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

**EXHIBIT A**

[Legal Description of Property]

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

ACKNOWLEDGMENT

STATE OF CALIFORNIA )

)

COUNTY OF LOS ANGELES )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_

[SEAL]

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

ACKNOWLEDGMENT

STATE OF CALIFORNIA )

)

COUNTY OF LOS ANGELES )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_

[SEAL]

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

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

# Southern California Edison

Confidential Information

RAP ID #5494, McCoy Solar, LLC

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


**MCCOY SOLAR, LLC,**  
a Delaware limited liability company

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

By:

By:

\_\_\_\_\_



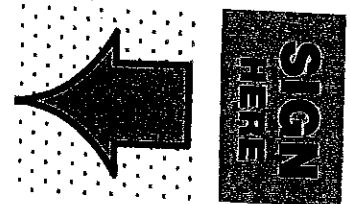
Michael O'Sullivan  
*Vice President*

Marc L. Ulrich  
*Vice President of  
Renewable and Alternative Power*

Date: September 29, 2011

Date: September 29, 2011

APPROVED  
RUSSELL C. SWARTZ  
Sr. Vice President and  
General Counsel  
By Kanya Chameleva  
Attorney  
September, 20 11



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

Signatures