

SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

FSE BLYTHE 1, LLC

(RAP ID # 5207)

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Southern California Edison

Confidential Information

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- F. Energy Replacement Damage Amount.
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- H. Milestone Progress Reporting Form.
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- K. Time of Delivery Periods and Energy Payment Allocation Factors.
- L. Procedure for Partial or Full Return of Development Security.
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The contents of this document are subject to restrictions on disclosure as set forth herein.

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

FSE BLYTHE 1, LLC

(RAP ID # 5207)

PREAMBLE

This Renewable Power Purchase and Sale Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the "Agreement") is made and effective as of the following date: December 1, 2007 ("Effective Date").

This Agreement is entered into between:

- (i) **Southern California Edison Company** ("SCE"), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **FSE Blythe 1, LLC** ("Seller"), a Delaware limited liability company, whose principal place of business is at 400 Somerset Corporate Blvd., Suite 501, Bridgewater, New Jersey 08807.

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

RECITALS

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

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

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

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Generating Facility.

- (a) Name: FSE Blythe Solar I.
- (b) Location of Site: Haig Drive, Blythe, California,
as further described in Exhibit B.
- (c) Generation Facility description is located in Exhibit B.
- (d) Eligible Renewable Energy Resource Type: Solar Photovoltaic.
- (e) Contract Capacity of Generating Facility: The Generating Facility shall be developed in two (2) phases with respect to Contract Capacity, as follows:
 - (i) Phase 1 Capacity: With respect to the first Phase ("Phase 1"), the capacity of the Generating Facility shall be equal to 7.50 MW (the "Phase 1 Capacity").
 - (ii) Phase 2 Capacity: With respect to the second Phase ("Phase 2"), Seller shall increase the capacity of the Generating Facility by up to an additional 13.50 MW, for a potential total Generating Facility size of 21.0 MW (the "Maximum Contract Capacity"). With respect to Phase 2, Seller must do all of the following by no later than the date which is thirty (30) days after Seller receives the final System Impact Study (the "Phase 2 Determination Date"); *provided however*, that Seller shall provide Notice to SCE of Seller's receipt of such System Impact Study within ten (10) Business Days after Seller's receipt thereof:
 - (1) Provide written Notice to SCE specifying the size of Phase 2 up to an additional 13.50 MW (such specified amount, the "Phase 2 Capacity");
 - (2) Provide a revised Exhibit B describing the Generating Facility and Site Description including Phase 2; and
 - (3) Post with SCE the Development Security for Phase 2, as provided for in Section 3.04(b)(ii).
 - (iii) Determining Contract Capacity: The Contract Capacity of the Generating Facility shall be determined as follows:

- (1) As of the Effective Date but prior to the Phase 2 Initial Operation Date, the Contract Capacity under this Agreement shall be equal to the Phase 1 Capacity, subject to reduction as set forth in Section 3.04(e).
 - (2) As of the Phase 2 Initial Operation Date, the Contract Capacity under this Agreement shall be equal to the sum of the Phase 1 Capacity and the Phase 2 Capacity, subject to reduction as set forth in Section 3.04(e).
- (f) Expected Annual Net Energy Production.

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

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

Where:

A = Contract Capacity in kW.

B = 27.0 % capacity factor.

C = 8,760 hours per year.

1.02 Forecasted Initial Operation Date.

The Forecasted Initial Operation Date shall be October 1, 2009.

1.03 Startup Deadline.

The Phase 1 Startup Deadline shall be December 31, 2009, or such other date as provided in this Agreement.

The Phase 1 Startup Deadline shall be extended on a day-for-day basis for any delay in enactment of the Federal Investment Tax Credit Legislation beyond December 31, 2008, but shall in no event be later than December 31, 2010.

The Phase 2 Startup Deadline shall be December 31, 2010, or such other date as provided in this Agreement.

The Phase 2 Startup Deadline shall be extended on a day-for-day basis for any delay in enactment of the Federal Investment Tax Credit Legislation beyond December 31, 2008, but shall in no event be later than December 31, 2011.

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1.04 Firm Operation Date.

The Phase 1 Firm Operation Date shall be the date that is six (6) months after the Phase 1 Initial Operation Date, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties.

The Phase 2 Firm Operation Date shall be the date that is six (6) months after the Phase 2 Initial Operation Date, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties.

1.05 Term.

The term of this Agreement ("Term") shall commence upon the Phase 1 Initial Operation Date as set forth in Section 2.03(a) and shall end on the last day of the calendar month which is two hundred forty (240) months (twenty (20) years) from the month of the Phase 2 Firm Operation Date.

1.06 Energy Price.

The Energy Price shall be eighty nine dollars and sixty two and one-half cents (\$89.625) per MWh.

1.07 Performance Assurance Amount.

One hundred forty thousand nine hundred sixty dollars (\$140,960) per MW of Contract Capacity.

1.08 Seller's Guarantor.

- (a) Guarantor: *[Guarantor Name, if any]*
- (b) Guaranty Amount: *[Dollar amount text]* dollars (\$*[Number]*)
- (c) Cross Default Amount: *[\$ _____, if any]*

1.09 Seller's Debt to Equity Ratio.

Equity: 30 %, Debt: 70 %

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1.10 CAISO Change Cost Threshold Amount.

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

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

Where:

- A = Expected Annual Net Energy Production set forth in Section 1.01(f), in kWh.
- B = Generation-weighted average of the time-differentiated Energy Price (i.e., generation-weighted average of "X times Y" below) based on Metered Amounts for all Settlement Intervals in the Term Year, in \$/kWh, where:
 - X = Energy Price specified in Section 1.06, in \$/kWh (i.e., \$/MWh/1000).
 - Y = Energy Payment Allocation Factor, set forth in Exhibit K, applicable to the Settlement Interval being calculated.
- C = Two percent (2%).

*** End of ARTICLE ONE ***

ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date.

This Agreement shall become effective on the Effective Date.

2.02 Obligations Prior to Commencement of the Term.

(a) CPUC Filing and Approval of this Agreement.

Within sixty (60) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval.

SCE shall seek such approval expeditiously, including promptly responding to any requests for information related to the request for approval from the CPUC.

Seller shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval.

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

(b) Seller's Interconnection and Transmission Service Applications.

Seller shall apply for and exercise diligence in obtaining a FERC-accepted interconnection agreement to interconnect the Generating Facility to the Transmission Provider's electric system and any transmission, distribution or other service agreement required to transmit electric energy from the Generating Facility to the Delivery Point.

(c) Seller's Regulatory and Governmental Filings.

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

- (1) An application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility; and
- (2) All applications or other appropriate requests with the proper authorities for all Permits.

- (ii) Seller shall expeditiously seek CEC Certification and Verification and all Permits, including promptly responding to any requests for information from the requesting authority.

2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

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

(b) Initial Operation.

Initial operation of the Generating Facility ("Phase 1 Initial Operation") shall be deemed to have been achieved on the date selected by Seller (the "Phase 1 Initial Operation Date") to begin Forecasting and delivering Product to SCE.

Seller shall provide at least three (3) Business Days advance Notice to SCE of the Phase 1 Initial Operation Date.

The Phase 1 Initial Operation Date shall be no later than one hundred twenty (120) days from Initial Synchronization.

In addition, on or prior to the Phase 1 Initial Operation Date:

- (i) SCE shall have obtained or waived CPUC Approval, as provided herein;
- (ii) Seller shall have met all conditions set forth in Section 3.10(c);
- (iii) SCE shall have been authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO as of Initial Synchronization;
- (iv) Seller shall have posted with SCE the Performance Assurance for the Phase 1 Capacity required under Section 8.02 in the amount set forth in Section 1.07;
- (v) SCE and Seller shall have executed all Security Documents required by Section 8.04;
- (vi) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider's electric system;
- (vii) Seller shall be Forecasting and delivering electric energy to SCE at the Delivery Point; and

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(viii) Seller shall have installed and placed in operation the stand-alone meteorological station required under Section 3.06(e).

(c) Phase 2 Initial Operation Date.

Initial operation of Phase 2 (“Phase 2 Initial Operation”) shall be deemed to have been achieved on the date selected by Seller (the “Phase 2 Initial Operation Date”) to begin Forecasting and delivering the Phase 2 Capacity (in addition to the Phase 1 Capacity) to SCE.

Seller shall provide at least three (3) Business Days advance Notice to SCE of the Phase 2 Initial Operation Date.

The Phase 2 Initial Operation Date shall be no later than the Phase 2 Startup Deadline as set forth in Section 1.03.

In addition, on or prior to the Phase 2 Initial Operation Date:

- (i) Seller shall have posted with SCE the Performance Assurance for the full Contract Capacity (i.e., Phase 1 Capacity and Phase 2 Capacity) required under Section 8.02 in the amount set forth in Section 1.07; and
- (ii) SCE and Seller shall have executed all Security Documents with respect to Phase 2 of the Generating Facility required by Section 8.04.

2.04 Termination Rights of the Parties.

If either Party exercises a termination right, as set forth in Sections 2.04(a), 2.04(b) or 2.04(c), the Forward Settlement Amount shall be zero dollars (\$0) and Seller shall be entitled to a return of any Development Security provided to SCE.

(a) Termination Rights of Both Parties.

- (i) Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, in the event CPUC Approval has not been obtained or waived by SCE in its sole discretion within three hundred sixty five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety fifth (395th) day after SCE files the request for CPUC Approval.
- (ii) Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the event CEC Certification and Verification and

Permit Approval have not been obtained by Seller within eighteen (18) months after the Effective Date and a Notice of termination is given on or before the end of the nineteenth (19th) month after the Effective Date.

(b) Termination Rights of Seller.

Seller shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given to SCE if Federal Investment Tax Credit Legislation is not enacted, or extended on substantially similar terms as exist as of the Effective Date, on or before October 1, 2008, or such later date as may be agreed to in a writing signed by both Parties, and such Notice is given to SCE not later than December 31, 2009, or such later date as may be agreed to in a writing signed by both Parties.

(c) Termination Rights of SCE.

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

- (i) The results of the latest of such studies performed as of the date of the termination Notice reflect that the total cost of transmission upgrades or new transmission facilities to SCE, or any Transmission Provider under the jurisdiction of the CAISO, that are not paid by Seller (without reimbursement from SCE or any other Transmission Provider) will exceed one hundred thousand dollars (\$100,000); or
- (ii) SCE shall be required to procure transmission service from any other Transmission Provider to allow SCE to Schedule electric energy and the cost for such transmission service is not reimbursed or paid by Seller.

(d) Uncured Defaults.

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

(e) End of Term.

At the end of the Term as set forth in Section 1.05, this Agreement shall automatically terminate.

2.05 Rights and Obligations Surviving Termination.**(a) Survival of Rights and Obligations Generally.**

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

- (i) The obligation of Seller to pay the Energy Replacement Damage Amount under Section 3.05(b);
- (ii) The obligation to make a Termination Payment under Section 6.03;
- (iii) The indemnity obligations to the extent provided in Section 10.03;
- (iv) The obligation of confidentiality set forth in Section 10.10;
- (v) The right to pursue remedies under Sections 6.02 and 10.16;
- (vi) The right to receive a Termination Payment under Section 6.03;
- (vii) The limitation of damages under Article Seven;
- (viii) The obligation of SCE to make payment for the Startup Period and Energy Payments for Delivered Amounts prior to termination under Section 4.02;
- (ix) The obligation of Seller to make payments for CAISO Charges, CAISO Sanctions and any SCE Penalty that are attributable to Seller's actions or omissions during the Startup Period and the Term pursuant to Section 3.20 and Exhibit Q;
- (x) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates' ability to offer, make or agree to third party sales as set forth in Sections 2.05(b) and 3.04(e), if applicable; and
- (xi) The obligation of Seller to post Performance Assurance under Section 8.02.

(b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from the Generating Facility after Certain Terminations of this Agreement.

If Seller terminates this Agreement, as provided in Section 2.04(a)(ii) or Section 5.05 (based upon a Force Majeure as to which Seller is the Claiming Party), or if SCE terminates this Agreement as provided in Section 3.04(c), neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than SCE for a period of two (2) years following the effective date of such termination.

This prohibition on contracting and sale shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, Seller or Seller's Affiliates provide SCE with a written offer to sell such electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE on terms and conditions materially similar to the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof.

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

*** End of ARTICLE TWO ***

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of Entire Output, Conveyance of Green Attributes and Capacity Attributes.

- (a) Delivered Amounts. Seller shall convey the *entire* Delivered Amounts during the Term to SCE. Seller shall convey title to and risk of loss of all Delivered Amounts to SCE at the Delivery Point.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Capacity Attributes and Resource Adequacy Benefits. In addition, Seller shall dedicate and convey any and all Capacity Attributes and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility during the Term to SCE and SCE shall be given sole title to all such Capacity Attributes and Resource Adequacy Benefits.
- (d) Further Action by Seller. Seller shall, at its own cost, take all actions and execute all documents or instruments necessary to effectuate the use of the Capacity Attributes, Green Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term.

Such actions shall include:

- (i) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
- (ii) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes;
- (iii) Complying with all current and future CAISO Tariff provisions that address resource adequacy, including provisions regarding performance obligations and penalties;
- (iv) Complying with Applicable Laws regarding the certification and transfer of Renewable Energy Credits, including participation in the Western Renewable Energy Generation Information System ("WREGIS") or other process recognized under Applicable Laws for

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the registration, transfer or ownership of Green Attributes associated with the Generating Facility; and

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

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

- (f) Costs to Effectuate Use of Green Attributes, Capacity Attributes and Resource Adequacy Benefits. Seller shall not be required to incur out-of-pocket costs, including in connection with WREGIS, in excess of Twenty Five Thousand dollars (\$25,000) in any calendar year in order to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term or to facilitate the use by any third party transferee of SCE of any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.
- (g) Other Sales of Product. From the Effective Date until the end of the Term, Seller shall not sell the Product (or any portion thereof) to any entity other than SCE, except that:
 - (i) Seller shall have the right to sell electric energy generated by the Generating Facility prior to Initial Operation and any Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to such electric energy generated by the Generating Facility prior to Initial Operation, and to retain all proceeds of such sales; and
 - (ii) In the event of an Extraordinary SCE Force Majeure, Seller may, but shall not be obligated to, sell the electric energy produced by the Generating Facility to a third party but such third party sales may take place only during the period that SCE is not accepting Seller's energy; *provided* that SCE shall provide Seller with Notice of the date on which SCE expects to renew acceptance, as soon as such information is available to SCE, of Seller's energy to facilitate Seller's termination of any such third party sales.

3.02 Resource Adequacy Benefits.

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

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

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

3.03 Permits and Interconnection, Transmission Service and CAISO Agreements.

- (a) Seller shall be responsible for obtaining and maintaining 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, including a FERC-accepted transmission or distribution service agreement required to transmit such electric energy.
- (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 Seller's Generating Facility to the Delivery Point.
- (c) Seller shall secure all required CAISO agreements, certifications and approvals, including a Participating Generator Agreement and a Meter Service Agreement.
 - (i) Seller's Participating Generator Agreement, Schedule 1, shall:
 - (1) List all generating units as a single aggregated unit; and
 - (2) Indicate that the generating capacity from the Generating Facility is contracted to SCE under a bi-lateral agreement; and
 - (ii) Seller's Meter Service Agreement, Schedule 1 shall treat all generating units as a single generating unit with a single electric energy meter.

- (d) Seller shall secure through the CAISO a CAISO Global Resource ID that is to be used solely for this Generating Facility..

3.04 Development Security.

- (a) Introduction.

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

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

- (b) Development Security.

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

- (i) Seller shall post one-half of the Development Security attributable to the Phase 1 Capacity within thirty (30) days following the Effective Date. Seller shall post the remaining half of the Development Security attributable to the Phase 1 Capacity within thirty (30) days following CPUC Approval;
- (ii) Seller shall post the Development Security attributable to the Phase 2 Capacity within thirty (30) days following the Phase 2 Determination Date;
- (iii) The Development Security shall be held by SCE and shall be in the form of either a cash deposit or a Letter of Credit;
- (iv) Any Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 4.06(a) of this Agreement; and
- (v) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.

(c) Forfeiture of Development Security
for Failure to Meet Startup Deadline; Extension of the Startup Deadline.

(i) Failure to Meet Startup Deadline.

Subject to Seller's right to extend the applicable Startup Deadline as provided in this Section 3.04(c), Section 1.03, and Section 5.03 (for Force Majeure where Seller is the Claiming Party), in the event that Initial Operation for the applicable Phase does not occur on or before the applicable Startup Deadline or, based upon SCE's reasonable determination, will not occur at all (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the applicable Startup Deadline), SCE shall be entitled to retain the entire Development Security for such Phase.

In addition, if Seller fails to meet the Phase 1 Startup Deadline, as such deadline may be extended, SCE shall have the right to terminate this Agreement and, subject to Section 2.05(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

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

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

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

Seller may further extend such Startup Deadline beyond the original Startup Deadline extension period subject to the same terms applicable to the original Startup Deadline extension.

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

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

In no event may Seller extend either the Phase 1 Startup Deadline or the Phase 2 Startup Deadline for more than a total of one hundred eighty (180) days beyond such Startup Deadline by the payment of Daily Delay Liquidated Damages.

(d) Full Return of Development Security.

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

- (i) Subject to Seller's achievement of the applicable Initial Operation by the applicable Startup Deadline or any applicable extended Startup Deadline as provided in Section 3.04(c), Seller demonstrates the full Contract Capacity for such Phase in accordance with the procedure set forth in Exhibit L on or before the applicable Firm Operation Date; or
- (ii) If this Agreement is terminated in accordance with Section 2.04(a), 2.04(b), 2.04(c) or 5.05; *provided that*, a termination under Section 5.05 shall only entitle Seller to a return of the Development Security if the termination is based upon a Force Majeure which prevents Seller from achieving Phase 1 Initial Operation by the Phase 1 Startup Deadline or demonstrating full Phase 1 Capacity by the Phase 1 Firm Operation Date.

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

With respect to each Phase, if, on or before the applicable Firm Operation Date, Seller has achieved the applicable Initial Operation by the applicable Startup Deadline as provided in Section 3.04(c), but is only able to demonstrate, in accordance with the procedure set forth in Exhibit L, a portion of the Phase 1 Capacity or the Phase 2 Capacity (the "Demonstrated Contract Capacity"), by the applicable Firm Operation Date, *then* the Development Security equal to the product of ten dollars (\$10) per kilowatt times the kilowatts of Demonstrated Contract Capacity for such Phase shall be returned to Seller as set forth in Exhibit L.

For the balance of any Development Security not returned to Seller, Seller shall forfeit and SCE shall be entitled to retain the balance of such

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Development Security for such Phase in accordance with the procedure set forth in Exhibit L.

In addition, as of the applicable Firm Operation Date:

- (i) If the Phase 1 Capacity set forth in Section 1.01(e) is greater than the Demonstrated Contract Capacity for such Phase, the Phase 1 Capacity shall be reduced to an amount equal to the Demonstrated Contract Capacity for Phase 1;
 - (ii) If the Demonstrated Contract Capacity for Phase 2 is greater than or less than the Phase 2 Capacity designated pursuant to Section 1.01(e), the Phase 2 Capacity shall be reduced or increased to an amount equal to the Demonstrated Contract Capacity for Phase 2;
 - (iii) The Expected Annual Net Energy Production set forth in Section 1.01(f) shall be calculated using the adjusted Contract Capacity;
 - (iv) The Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 8.02 shall be recalculated using the applicable adjusted Contract Capacity, and any amount of Performance Assurance in excess of that required for the applicable adjusted Contract Capacity shall be returned to Seller; and
 - (v) Neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Contract Capacity with respect to each Phase ("Unincluded Capacity"), subject to Section 3.04(f).
- (f) Restrictions on Sales Related to Unincluded Capacity.
- (i) Neither Seller nor Seller's Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes or Resource Adequacy Benefits associated with or attributable to Unincluded Capacity from each Phase from a generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE's Notice to Seller of its partial forfeiture of the Development Security for the applicable Phase pursuant to Exhibit L.
 - (ii) With respect to Seller's Affiliates, the prohibition on contracting and sale in the preceding Section 3.04(f)(i) shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, any Seller's Affiliate wishing to enter into a contract or sale provides

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SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to or no less favorable to SCE than the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof; *provided that any Seller's Affiliate wishing to enter into a contract or sale must:*

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

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

3.05 Seller's Energy Delivery Performance Obligation.

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

(a) Performance Requirements.

(i) Seller's Energy Delivery Obligation.

Seller's Energy Delivery Obligation shall be equal to one hundred forty percent (140%) of the Expected Annual Net Energy Production identified in Section 1.01(f).

(ii) Event of Deficient Energy Deliveries.

At the end of each Term Year commencing with the end of the second Term Year, if the sum of Seller's Qualified Amounts plus any Lost Output (calculated in accordance with Exhibit M) in the applicable

Calculation Period does not equal or exceed Seller's Energy Delivery Obligation, *then* an "Event of Deficient Energy Deliveries" shall be deemed to have occurred.

(b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in accordance with Section 3.05(a)(ii) above, the Parties acknowledge that the damages sustained by SCE associated with Seller's failure to meet Seller's Energy Delivery Obligation would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that Seller shall pay SCE as liquidated damages an amount which is intended to compensate SCE for Seller's failure to perform, irrespective of whether SCE actually purchased such replacement electric energy by reason of Seller's failure to perform (the "Energy Replacement Damage Amount").

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

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

The Parties shall negotiate in good faith to resolve any disputed portion of the Energy Replacement Damage Amount and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.

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

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

(i) SCE shall prepare and provide to Seller within thirty (30) days after the end of each calendar quarter during each Calculation Period quarterly statements (each a "Quarterly Statement") showing the sum

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- of Seller's Qualified Amounts plus Lost Output for such completed calendar quarter, the pro rata portion of Seller's Energy Delivery Obligation for such calendar quarter and, for informational and not billing purposes, any estimated Energy Replacement Damage Amount (as calculated in accordance with Exhibit F) that has accrued for such Calculation Period as of the end of such calendar quarter. SCE's Quarterly Statement shall be accompanied by a statement of all facts and information relied upon by SCE in formulating its calculation methodologies, including annotated work papers and source data.
- (ii) Seller shall have forty-five (45) days after receipt of a Quarterly Statement to review the statement and provide Notice to SCE of any dispute Seller has with the reported Qualified Amounts, Lost Output, pro rata portion of Seller's Energy Delivery Obligation or estimate of Energy Replacement Damage Amount for such Quarterly Statement. Seller's Notice shall include Seller's calculation of the Qualified Amounts, Lost Output, pro rata portion of Seller's Energy Delivery Obligation or estimated Energy Replacement Damage Amount for the Calculation Period as of the end of such calendar quarter, and all facts and information relied upon by Seller in formulating its calculation methodologies and claims, including annotated work papers and source data.
- (iii) Seller shall make a good faith effort to ascertain and include in its Notice any and all disputes that Seller has with the Quarterly Statement.
- (iv) The Parties shall negotiate in good faith for a maximum of thirty (30) days to resolve any disputed portion of such Quarterly Statement and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.
- (d) Continuing Obligations of Seller.

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

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

(a) CAISO Approved Meter.

Seller shall:

- (i) Execute a Meter Service Agreement with the CAISO, pursuant to the CAISO Tariff; and
- (ii) Install and pay for any real-time meter and related communications equipment required by SCE, the CAISO, and the Transmission Provider.

Such equipment shall include 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 (collectively the "CAISO Approved Meter").

(b) Access to CAISO Approved Meter.

- (i) Subject to Section 3.16, Seller shall grant SCE reasonable access to the meter(s) for meter readings and any purpose necessary to effectuate this Agreement.

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

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

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

(c) CAISO Approved Meter Maintenance.

- (i) Seller shall test and calibrate the CAISO Approved Meter, as necessary, but in no event shall the period between testing and calibration dates be greater than twenty four (24) months.

- (ii) Seller shall replace the CAISO Approved Meter battery at least once every thirty six (36) months or such shorter period as may be recommended by the battery manufacturer.

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

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

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

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

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

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

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

The station(s) shall be designed and equipped to measure, collect and record data in accordance with CAISO's PIRP protocols and the requirements of SCE.

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

Seller shall communicate meteorological data to SCE via a system consistent with SCE's employed methods at the time of installation.

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

Telemetry equipment shall be designed to function in accordance with CAISO's PIRP protocols and SCE's communication system employed at the time of installation.

Seller shall submit to SCE for review and approval, its technical specifications for the meteorological station(s) along with a site plan showing the location of the station(s), the location of all Solar Generating Units and the wind rose for the Site, as applicable.

(f) Real-Time Communication of Availability.

(i) Prior to Initial Synchronization, Seller shall install a telecommunication system to interface with the Web Client to provide SCE with Seller's cumulative available capacity of the Generating Facility on a real-time basis ("Real-Time Availability").

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

- (iii) Upon Notice from SCE, Seller shall repair or have corrected within five (5) days of receipt of such Notice any:
 - (1) Inoperable telecommunications path;
 - (2) Inoperable software; or
 - (3) Faulty instrumentation.
- (iv) Seller shall submit an Actual Availability Report pursuant to Section 3.21 for any month in which Seller's telecommunications system was not available or did not provide quality data for longer than twenty four (24) continuous hours.

3.07 Site Control.

- (a) On or before Initial Synchronization and at all times during the Term, Seller shall have Site Control, which means that Seller shall:
 - (i) Own the Site;
 - (ii) Be the lessee of the Site under a Lease;
 - (iii) Be the holder of a right-of-way grant or similar instrument with respect to the Site; or
 - (iv) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.
- (c) Seller shall provide SCE with Notice of the status of its Site Control prior to commencing construction of the Generating Facility.

3.08 Site Location.

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

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

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

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

3.09 Design.

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

- (a) Designing and constructing the Generating Facility;
- (b) Using commercially reasonable efforts to acquire all Permits;
- (c) Providing to SCE, at least thirty (30) days prior to the anticipated Initial Operation Date for each Phase, the following Generating Facility information for each Phase:
 - (i) Site plan drawings for the Generating Facility;
 - (ii) Electrical one line diagrams;
 - (iii) Control and data acquisition details and configuration documents;
 - (iv) Major electrical equipment specifications;
 - (v) General arrangement drawings;
 - (vi) Longitude and latitude of each generator;
 - (vii) Artist renderings of the Site, if any;
 - (viii) Aerial photographs of the Site, if any;
 - (ix) Solar generating unit specification;
 - (x) Solar energy collection grid diagrams; and
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in Seller's Generating Facility, but in no event less than thirty (30) days before the changes are to be made, which such Notice shall include the information set forth in Section 3.09(c) above, along with all specifications and drawings pertaining to any such changes and any changes to Exhibit B.

3.10 Operation and Record Keeping.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Commencing upon the date on which all CAISO agreements have been executed by Seller and continuing throughout the Term of this Agreement, Seller shall comply with all provisions of the CAISO Tariff.

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- (c) Prior to Initial Synchronization:
 - (i) Seller shall obtain CEC Certification and Verification;
 - (ii) Seller shall obtain all necessary Permits;
 - (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 prior to Initial Synchronization;
 - (iv) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider and CAISO agreements;
 - (v) 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;
 - (vi) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the CAISO Approved Meter as set forth in Section 3.06(a); and
 - (vii) Seller shall have furnished to SCE all insurance documents required under Section 10.11(b).
- (d) Seller shall keep a daily operations log for the Generating Facility that shall include the following information:
 - (i) Availability;
 - (ii) Circuit breaker trip operations;
 - (iii) Any significant events related to the Operation of the Generating Facility;
 - (iv) Real and reactive power and energy production;
 - (v) Changes in Operating status;
 - (vi) Protective apparatus operations;
 - (vii) Any unusual conditions found during inspections;
 - (viii) Electric energy production, fuel consumption and efficiency (if applicable); and

- (ix) Status and settings of generator controls including automatic voltage regulator and power system stabilizer.
- (e) Seller shall maintain complete records of the Generating Facility's solar insolation and other pertinent meteorological conditions and operational status of each Solar Generating Unit.
- (f) Seller shall keep a maintenance log for the Generating Facility that shall include information on maintenance (both breakdown and preventative) performed, outages, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.

Such information in (a) and (b) above shall be provided or made available to SCE within twenty (20) days after any Notice.

- (g) Upon Notice from SCE, Seller shall promptly curtail the production of the Generating Facility. Such Notice shall be provided to Seller only in the event SCE, as Seller's Scheduling Coordinator, is instructed by the CAISO to curtail energy deliveries in order to respond to a CAISO Forecasted Over-Generation Condition, a CAISO Declared Over-Generation Condition or an Emergency.
- (h) Information maintained pursuant to this Section 3.10 shall be kept for the Term of this Agreement and shall be provided or made available to SCE within twenty (20) days after any Notice.

3.11 Obtaining Scheduling Coordinator Services.

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

- (a) SCE as Scheduling Coordinator.
 - (i) At least thirty (30) days prior to Initial Synchronization, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as Seller's Scheduling Coordinator during the period that begins at Initial Synchronization and ends at Phase 1 Initial Operation ("Startup Period") and throughout the Term of this Agreement.
 - (ii) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator.

(b) Replacement of Scheduling Coordinator.

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

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

3.12 Forecasting.

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

3.13 Scheduled Outages.

- (a) No later than January 1st, April 1st, July 1st and October 1st of each year during the Term, and at least sixty (60) days prior to Initial Synchronization, Seller shall submit to SCE its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using an SCE-provided web-based system ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within twenty (20) Business Days after SCE's receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE's requests regarding the timing of any planned outage.

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

3.14 Progress Reporting Toward Meeting Milestone Schedule.

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

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

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

3.15 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
- (b) All applications and approvals relating to CEC Certification and Verification, any material Permits and PIRP;
- (c) All draft, preliminary, final and revised copies of reports, studies and analyses furnished by the CAISO, Seller's Transmission Consultant, or any Transmission Provider, and any correspondence related thereto, concerning

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the interconnection of the Generating Facility to the Transmission Provider's electric system or the transmission of electric energy from the Generating Facility to the Delivery Point;

- (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;
- (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 reports, studies, or assessments done for Seller by an independent engineer; and
- (g) All Generating Facility and metering information as may be requested by SCE, including the following, at least thirty (30) days prior to Initial Synchronization:

For each CAISO Approved Meter:

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

For the Generating Facility:

- (1) Utility transmission/distribution one line diagram;
- (2) Physical location, address or descriptive identification;

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- (3) Latitude and longitude;
- (4) Telephone number on site;
- (5) Telephone number of control room;
- (6) Telephone number for operational issues; and
- (7) Telephone number for administrative issues.

3.16 SCE's Access Rights.

Seller shall grant SCE the right of ingress and egress to examine the Site and Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC.

3.17 Obtaining and Maintaining CEC Certification and Verification.

Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term; *provided, however* that this obligation shall not apply to the extent that Seller is unable to obtain and maintain CEC Certification and Verification because of a change in the RPS Legislation, or the rules or regulations relating thereto, occurring after the Effective Date and Seller has made commercially reasonable efforts to obtain and maintain CEC Certification and Verification under the then-current Applicable Law.

The term "commercially reasonable efforts" as used in this Section shall not require Seller to incur out of pocket costs in excess of Twenty Five Thousand dollars (\$25,000) in any year in order to obtain and maintain CEC Certification and Verification under the then-current Applicable Law.

3.18 Notice of Cessation or Termination of Service Agreements.

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

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

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

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

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

(b) Disputes of Lost Output.

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

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

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

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

(c) Energy Replacement Damage Amount Calculation.

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

Generating Facility Power Curve derived for the Term Year for which the Lost Output is being calculated.

3.20 CAISO Charges, CAISO Sanctions and SCE Penalties.

(a) Startup Period.

During the Startup Period, Seller shall be responsible for all CAISO Charges and CAISO Sanctions, if any, attributable to or assessed for test energy delivered by Seller to the real-time market (and any other CAISO administered market that may from time to time be implemented).

(b) After Initial Operation.

(i) Commencing upon Phase 1 Initial Operation and continuing throughout the Term, Seller shall have no responsibility for CAISO Charges attributable to or assessed for energy delivered by Seller to SCE.

(ii) In the event Seller fails to comply with the availability forecasting provisions set forth in Exhibit D, Seller may be liable to pay an SCE Penalty as set forth in Exhibit Q.

(c) Seller shall make payments for CAISO Charges, CAISO Sanctions and any SCE Penalty in accordance with those provisions set forth in Section 3.20(a) and Exhibit Q.

(d) If Seller disputes any CAISO Charge or CAISO Sanction, Seller shall provide Notice of such dispute within five (5) Business Days of becoming aware of such CAISO Charge or CAISO Sanction.

3.21 Actual Availability Report.

(a) Commencing upon Phase 1 Initial Operation and continuing throughout the Term, if at any time Seller does not provide Real-Time Availability for longer than twenty four (24) continuous hours, Seller shall prepare and provide to SCE a report with the Settlement Interval Actual Available Capacity of the Generating Facility (an "Actual Availability Report") for each month.

Such report shall be in the form set forth in Exhibit S and shall be delivered to SCE no later than the seventh (7th) Business Day following the end of the month which is the subject of the Actual Availability Report.

- (b) Upon SCE's request, Seller shall promptly provide to SCE any additional data and supporting documentation necessary for SCE to audit and verify any matters set forth in the Actual Availability Report.

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

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

3.23 Seller's Provision of Historic Solar Data.

- (a) Seller shall provide to SCE a minimum of one (1) year of historical meteorological data from the Site vicinity as reported by Meteororm Database v5.0 produced by Meteotest or the Blythe Airport Meteorological Station not later than ninety (90) days prior to Phase 1 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 is to provide the following data to the extent such data has been recorded:

- (i) Direct normal insolation;
- (ii) Total global radiation;
- (iii) Wind direction;
- (iv) Wind speed;
- (v) Air temperature;
- (vi) Barometric pressure;

- (vii) Relative humidity;
 - (viii) Elevation of the station; and
 - (ix) 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.

3.24 Application of Prevailing Wage.

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

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

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

For Seller's *full* compensation under this Agreement, SCE shall forward to Seller any CAISO Revenues and assess against Seller any CAISO Charges incurred during the Startup Period and shall make monthly Energy Payments to Seller during the Term calculated in the manner described in Section 4.02 and Exhibit Q.

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

- (a) An outage of the Generating Facility;
- (b) A Force Majeure under Article Five;
- (c) A reduction or curtailment of Delivered Amounts ordered by the CAISO; or
- (d) A reduction or curtailment of Delivered Amounts pursuant to the terms of an agreement with a Transmission Provider.

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

For the purpose of calculating monthly payment statements related to test energy delivered to the real-time market during the Startup Period, SCE shall compile all CAISO Charges and CAISO Revenues directly assessed or credited by the CAISO to the CAISO Global Resource ID for the Generating Facility.

(b) Energy Payment Calculations during the Term.

For the purpose of calculating monthly payments for Product delivered to SCE as of Phase 1 Initial Operation in accordance with the terms of this Agreement ("Energy Payments"), Delivered Amounts shall be time-differentiated according to the TOD Periods set forth in Exhibit K and the pricing shall be weighted by the Energy Payment Allocation Factors set forth in Exhibit K.

Monthly Energy Payments shall equal the sum of the TOD Period Energy Payments for all TOD Periods in the month. Each TOD Period Energy

Payment shall be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

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

Where:

- A = Energy Price specified in Section 1.06 in \$/kWh (i.e., \$/MWh/1000).
- B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.
- C = The sum of Delivered Amounts in all hours for the TOD Period being calculated in kWh.

4.03 Payment Statement and Payment.

- (a) After Initial Synchronization, no later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is a weekend day or holiday during which:
 - (i) Seller is delivering test energy during the Startup Period;
 - (ii) Delivered Amounts are provided to SCE;
 - (iii) CAISO Charges, CAISO Sanctions or any SCE Penalties are incurred;
or
 - (iv) Adjustments for payment errors are made as set forth below;
- SCE shall do each of the following:
- (v) Send a statement to Seller showing:
 - (1) The sum of the CAISO Charges and CAISO Revenues that are directly assigned by the CAISO to the CAISO Global Resource ID(s) for the Generating Facility for test energy delivered to the real-time market during the Startup Period, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electric energy deliveries during that month) or thirty (30) days after the

- CAISO final settlement data is available to SCE for such deliveries, whichever is sooner;
- (2) The Delivered Amounts for each TOD Period during the month for which the payment is being made;
 - (3) A calculation of the amount payable to Seller for the month pursuant to Section 4.02;
 - (4) The CAISO Charges, CAISO Sanctions and SCE Penalties pursuant to Exhibit Q, which will be available approximately one hundred twenty (120) days following the last day of a calendar month (for electric energy deliveries during that month) or thirty (30) days after the CAISO final settlement data is available to SCE for such deliveries, whichever is sooner; and
 - (5) A calculation of the net amount due Seller; and
- (vi) Send to Seller, via wire transfer, SCE's payment of said net amount, plus, if such payment is late, a Simple Interest Payment calculated using the Interest Rate and the number of days that such payment is late.
- (b) In the event SCE determines that:
- (i) The CAISO has recalculated CAISO Charges or CAISO Revenues for test energy delivered to the real-time market during the Startup Period; or
 - (ii) A calculation of Metered Amounts, CAISO Charges, 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 Charges or CAISO Sanctions by the CAISO,

SCE shall promptly recompute Metered Amounts, CAISO Charges, CAISO Sanctions or SCE Penalties for the period of the inaccuracy based upon an adjustment of inaccurate meter readings, correction of data or recalculation of CAISO Charges or CAISO Sanctions in accordance with the CAISO Tariff.

SCE shall also promptly recompute any payment affected by any meter or CAISO Charge, CAISO Sanction or SCE Penalty inaccuracy. Any amount due from SCE to Seller, or Seller to SCE, as the case may be, shall be made as an adjustment to the next monthly payment statement that is calculated after SCE's recomputation using corrected measurements.

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

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

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

Adjustment payments for meter inaccuracy shall not bear interest.

(c) Netting Rights.

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

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

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

(d) Waiver.

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

information from SCE in which to give Notice to SCE of the error identified by such settlement, audit or other information.

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

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

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

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

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

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

4.04 Scheduling Coordinator.

Commencing upon Initial Synchronization, SCE shall act as Scheduling Coordinator, on behalf of Seller with no additional fees to Seller for such services, and shall submit bids and Schedules to the CAISO in accordance with CAISO Tariff protocols.

(a) Duties as Scheduling Coordinator.

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

(b) Termination of Scheduling Coordinator.

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

- (i) Thirty (30) days prior to the end of the Term; or
- (ii) The date of any early termination of this Agreement.

4.05 CAISO Charges.

- (a) Except as set forth in Section 3.20 and Exhibit Q, SCE shall be responsible for all CAISO Charges during the Term.
- (b) To the extent that SCE requires Seller to participate in the PIRP program, SCE shall be responsible for PIRP forecasting fees.

4.06 Interest Payments on Cash Deposits.

- (a) SCE shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the:
 - (i) Development Security; and
 - (ii) Performance Assurance.
- (b) Upon receipt of a monthly invoice (provided by Seller to the SCE Manager of Credit and Collateral as set forth in Exhibit C) that sets forth the calculation of the Simple Interest Payment amount due, SCE shall make payment thereof by the third (3rd) Local Business Day of the first month after the last month to which the invoice relates so long as such date is after the day on which such invoice is received; *provided that,*

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

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

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

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure.

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

5.02 Requirements Applicable to the Claiming Party.

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

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

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

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

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

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

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

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

5.03 Startup Deadline Extension.

If Force Majeure occurs prior to a Startup Deadline which prevents Seller from achieving such Startup Deadline, *then* that Startup Deadline shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure. An extension of the Startup Deadline for one Phase will not automatically extend the Startup Deadline for the other Phase for the same event of Force Majeure; *provided, however*, that an event of Force Majeure may apply to both Phase 1 and Phase 2 so long as Seller independently establishes the need for an extension for Force Majeure for each Phase.

5.04 Firm Operation Date Extension.

If Force Majeure occurs at any time after commencement of the Term, but prior to the Firm Operation Date for a Phase, which prevents Seller from demonstrating the Contract Capacity for such Phase as provided in Sections 3.04(d) or 3.04(e),

then the Firm Operation Date for such Phase shall, subject to Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.05 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which extends for more than three hundred sixty five (365) consecutive days.

*** End of ARTICLE FIVE ***

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

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

- (a) With respect to either Party:
 - (i) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if:
 - (1) Such misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice; or
 - (2) Such inaccuracy is not capable of a cure, but the non-breaching Party's damages resulting from such inaccuracy can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the non-breaching Party to the breaching Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure (or such shorter period as may be specified below), which Notice sets forth in reasonable detail the nature of the failure; *provided that*, if such failure is not reasonably capable of being cured within the thirty (30) day cure period specified above, the Party shall have such additional time (not exceeding an additional one hundred twenty (120) days) as is reasonably necessary to cure such failure, so long as such Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment in a material amount (including not making when due any material portion of the payment) required under this Agreement (other than payments disputed in good faith in accordance with the dispute resolution terms of this Agreement) and such failure is not cured within five (5) Business Days after Notice of such failure;

- (iv) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within three (3) Business Days after Notice of such failure;
 - (v) A Party becomes Bankrupt; or
 - (vi) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (b) With respect to Seller's Guarantor (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) If any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after Notice;
 - (iii) A Guarantor becomes Bankrupt;
 - (iv) The failure of a Guarantor's Guaranty Agreement to SCE to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
 - (v) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to SCE;
 - (vi) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or

- (vii) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than five million dollars (\$5,000,000);
- (c) With respect to Seller:
 - (i) Seller fails to post and maintain the Development Security pursuant to Section 3.04(b) and such failure is not cured within five (5) Business Days after Notice of such failure;
 - (ii) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a)(iv);
 - (iii) Seller has not cured a failure with respect to Section 3.07(a) within the earlier of thirty (30) days after providing Notice in accordance with Section 3.07(b) or sixty (60) days after the occurrence of the event which results in such failure;
 - (iv) The sum of Qualified Amounts plus Lost Output in any consecutive six (6) month period is not at least 10 percent (10%) of the Expected Annual Net Energy Production set forth in Section 1.01(f), and Seller fails to demonstrate to SCE's reasonable satisfaction, within twenty (20) Business Days after Notice from SCE, a legitimate reason for such failure;
 - (v) Seller installs Generating Facility Capacity in excess of the Maximum Contract Capacity (net of Station Use) and attempts to sell the output of such excess capacity to SCE, and such Generating Facility Capacity is not removed within five (5) Business Days after Notice from SCE;
 - (vi) Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE;
 - (vii) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(c);
 - (viii) Subject to Section 3.17, the Generating Facility fails to qualify as an ERR;
 - (ix) Subject to Section 3.17, any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as eligible renewable energy for purposes of the RPS Legislation;

- (x) Seller fails to achieve Phase 1 Initial Operation within the timeframes set forth in Section 2.03 and such failure is not cured within five (5) Business Days after Notice from SCE;
- (xi) A termination of, or cessation of service under, any agreement necessary for:
 - (1) Interconnection of the Generating Facility to the Transmission Provider's electric system;
 - (2) Transmission of the electric energy to the Delivery Point; or
 - (3) Metering of the Metered Amountsand such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;
- (xii) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (xiii) 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;
- (xiv) Subject to a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
- (xv) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;
- (xvi) Seller fails to maintain its Participating Generator Agreement and Meter Service Agreement during the Term; or
- (xvii) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Exhibit U, if applicable.

6.02 Early Termination.

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

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

- (a) To designate by Notice, a day, no earlier than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) To immediately suspend performance under this Agreement; and
- (c) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party (the "Termination Payment").

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

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), *then* the Non-Defaulting Party shall pay such amount to the Defaulting Party within thirty (30) days after the Notice is provided.

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

*** End of ARTICLE SIX ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

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

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

SUBJECT TO SECTION 10.16, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE VALUE OF ANY INVESTMENT TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO SCE'S DEFAULT (WHICH SELLER WAS NOT ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS), IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF SECTION 10.03 (INDEMNITY), NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

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

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

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

RAP ID# 5207, FSE Blythe 1, LLC

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

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

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

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

ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS

8.01 Financial Information.

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

8.02 Performance Assurance.**(a) Posting Performance Assurance.**

Seller shall post Performance Assurance with SCE:

- (i) For Phase 1 on or before the commencement of the Term; and
- (ii) For Phase 2, on or before the Phase 2 Initial Operation Date.

The Performance Assurance Amount due to SCE by Seller for each Phase shall be as set forth in Section 1.07.

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

The Performance Assurance Amount for each Phase shall be either in the form of cash or Letter of Credit acceptable to SCE, *provided that*, on the commencement of the Term (with respect to Phase 1) or on the Phase 2 Initial Operation Date (with respect to Phase 2), if Seller has posted the Development Security for such Phase in the form of cash or a Letter of Credit and SCE has neither returned the Development Security for such Phase to Seller nor given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of such Development Security by such date, *then* Seller may withhold the portion of the Performance Assurance Amount for such Phase equal to the Development Security or any portion thereof held by SCE for such Phase until three (3) Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 3.04 and Exhibit L, after which Seller shall be obligated to post the full Performance Assurance Amount.

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

(b) Letters of Credit.

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

- (i) Each Letter of Credit shall be maintained for the benefit of SCE;

- (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
 - (3) If the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within one (1) Business Day after such refusal;
- (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies);
- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, *then* SCE may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

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

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

- (1) Failure to provide or maintain sufficient Performance Assurance; or

- (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE; and
- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement.

If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit I executed by the Guarantor identified in Section 1.08 or other party acceptable to SCE meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

- (i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or
- (ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to SCE Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to SCE, within five (5) Business Days.

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

To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to SCE a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security for each Phase, the Performance Assurance for each Phase, any other cash collateral and cash equivalent collateral posted pursuant to Sections 3.04 and 8.02 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of SCE, and Seller agrees to take such action as SCE reasonably requires in order to perfect SCE's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

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

8.04 Subordinated Security Interests and Mortgage.

- (a) Prior to the commencement of the Term, as security for Seller's obligation to pay any Termination Payment, Seller or SCE, as the case may be, shall execute, deliver, file and record, as appropriate, separate agreements, documents, fixture filings, financing statements or instruments (the "Security Documents") under which Seller will grant to SCE, in a form reasonably acceptable to SCE and subject to characterization as real or personal property in SCE's sole discretion, fully perfected security interest(s), or mortgage lien(s) in the Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or Operate the Generating Facility, including all Permits (collectively the "Secured Interests").

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

The Secured Interests shall be subordinate in right of payment, priority and remedies to the interests of Lender (but no other party) in accordance with the terms of the Secured Interests.

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

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

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

The Security Documents shall contain financial and operating covenants intended to preserve and maintain the value of the Security Interests and substantially similar to those in favor of Lender.

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

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

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

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

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

8.05 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 Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein.

- (b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral or otherwise to any party other than Lender.
- (c) Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any Disqualified Stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or Disqualified Stock issued, in connection with the funding of the development, construction or operation of the Generating Facility.
- (d) Except for Permitted Liens and liens for the benefit of Lender, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person, any lien on Seller's interest (or any part thereof) in this Agreement, the Site or the Generating Facility.

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

Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller's interest (or any part thereof) in the Site, the Generating Facility, or any part thereof or interest therein.

- (e) Seller shall not permit Seller's Debt to Equity Ratio to exceed the amount set forth in Section 1.09.
- (f) Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and Operation of the Generating Facility.
- (g) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
- (h) During any period during which a Seller is a Defaulting Party, Seller shall not:
 - (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or
 - (ii) Otherwise make any distribution or payment to any Affiliate of Seller.

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8.06 Waivers.

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

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

ARTICLE NINE. GOVERNMENTAL CHARGES

9.01 Cooperation to Minimize Tax Liabilities.

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

9.02 Governmental Charges.

Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Delivered Amounts (and any contract associated with the Delivered Amount) arising prior to and at the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, land, land rights or interests in land for the Generating Facility.

SCE shall pay or cause to be paid all Governmental Charges on or with respect to the Delivered Amounts from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are SCE’s responsibility hereunder, SCE shall promptly reimburse Seller for such Governmental Charges.

If SCE is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct such amounts from payments to Seller made pursuant to Article Four.

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

9.03 Providing Information to Taxing Authorities.

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

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

ARTICLE TEN. MISCELLANEOUS

10.01 Representations and Warranties.

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

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

It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement;

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

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

10.02 Additional Seller Representations, Warranties and Covenants.

- (a) Seller hereby represents, warrants and covenants to SCE that throughout the Term:
 - (i) Seller shall own and Operate the Generating Facility;
 - (ii) Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
 - (iii) Seller shall hold the rights to all Green Attributes, Capacity Attributes and Resource Adequacy Benefits, which Seller has conveyed and has committed to convey to SCE hereunder;
 - (iv) Seller shall maintain and remain in compliance with all Permits; and
 - (v) Seller shall have CEC Certification and Verification, and all Permits, interconnection agreements and transmission rights necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point at the time any such certification, Permits, agreements and rights are necessary, and at all times thereafter until the end of the Term.
- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
- (c) The term "commercially reasonable efforts" as used in Section 10.02(b) shall not require Seller to incur out of pocket costs in excess of Twenty Five Thousand dollars (\$25,000) in any year in order to obtain and maintain CEC Certification and Verification under the then-current Applicable Law.
- (d) In addition, Seller represents, warrants and covenants to SCE that, with respect to the Generating Facility for the purposes of this Agreement, Seller does not intend to and shall not apply for, receive or utilize production

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incentives or supplemental energy payments pursuant to Sections 25742 or 25743 of the Public Resources Code.

10.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys' fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity shall apply notwithstanding the active or passive negligence of the indemnitee.

However, neither Party shall be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense resulting from its sole negligence or willful misconduct.

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the other Party of its representations and warranties in Sections 10.01 and 10.02.
- (c) The provisions of this Section 10.03 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.11.

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

- (e) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (f) Seller shall defend, save harmless and indemnify SCE against any penalty imposed upon SCE as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.
- (g) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

10.04 Assignment.

- (a) Except as provided in Section 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld.

10.05 Consent to Collateral Assignment.

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

In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

- (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of such Event of Default;
- (b) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning:

- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
- (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

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

- (c) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement or under the Collateral Assignment Agreement, as applicable; *provided that*, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;
- (d) Lender shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;
- (f) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement);

provided that, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date; *provided, however*, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to

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avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement;
- (g) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), *then* Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer.

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

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

Notwithstanding the foregoing sentence, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's judgment, materially impact the rights or obligations of SCE under such an agreement.

10.06 Abandonment.

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

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

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

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

Notices (other than Forecasting and scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service or facsimile.

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

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

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

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

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

10.09 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties.
- (d) This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement shall include the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used herein are for convenience and reference purposes only. Words having well-known technical or industry meanings shall have such meanings unless otherwise specifically defined herein.
- (i) Where days are not specifically designated as Business Days, they shall be considered as calendar days.
- (j) This Agreement shall be binding on each Party’s successors and permitted assigns.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement covering transmission, distribution, metering, scheduling or interconnection. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement shall control.
- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or

credit rating agency, the Parties hereby agree that the reference shall also refer to any successor to such law, tariff or organization.

- (m) SCE has assigned a RAP ID number to this Agreement for tracking purposes only.
- (n) SCE's obligation to take and pay for electric energy produced by the Generating Facility, together with Green Attributes, Resource Adequacy Benefits and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of the RPS Legislation.
- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- (p) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

10.10 Confidentiality.

(a) Terms and Conditions of this Agreement.

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

- (i) To such Party's employees, Lenders, counsel, accountants, advisors, Affiliates, 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 shall not be unreasonably withheld, delayed or conditioned; *provided, however*, that disclosure:
 - (1) Of cash flow and other financial projections to any potential Lender in connection with a potential loan or tax equity investment; or
 - (2) To potential Lenders with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding,

- shall not require such consent of SCE, and provided further that, in each case such potential Lender has a need to know such information and has agreed to keep such terms confidential;
- (iii) To SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to any confidentiality agreements or laws, regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
 - (iv) To the CPUC under seal for purposes of review subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
 - (v) To the CAISO 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 Disclosing Party, other than to those entities set forth in Section 10.10(a)(vii);
 - (vii) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any mandatory discovery or data request of a party to any proceeding pending before any of the foregoing;
 - (viii) To any governmental body, the CPUC, the CAISO or any local control area or regional authority having jurisdiction in order to support SCE's resource adequacy requirement showings, if applicable; *provided that* SCE shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable governmental body, CAISO, local control area or regional authority to further disclose such information;
 - (ix) As may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility;
 - (x) To representatives of a Party's credit ratings agencies:

- (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes and have agreed to keep such information confidential; or
- (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations;
- (xi) Disclosure of terms specified in and pursuant to Section 10.10(c);
- (xii) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in Sections 10.10(a)(vi) and 10.10(a)(vii) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:
 - (1) Notify the other Party prior to disclosing the confidential information; and
 - (2) Prevent or limit such disclosure.

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

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

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

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

(b) Non-Disclosure Agreement.

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

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

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

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

(c) RPS Confidentiality.

Notwithstanding Section 10.10(a), at any time on or after the Effective Date, either Party shall be permitted to disclose the following terms with respect to this Agreement:

- (i) Party names;
- (ii) ERR type;
- (iii) Term;
- (iv) Generating Facility location;
- (v) Delivery Point;
- (vi) Generating Facility's expected energy deliveries;
- (vii) Forecasted Initial Operation Date; and
- (viii) Contract Capacity.

10.11 Insurance.

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

The insurance carrier or carriers and form of policy shall be subject to review and approval by SCE which approval shall not be unreasonably withheld, conditioned or delayed.

- (b) Before commencement of the Term, as provided in Section 2.03(a), Seller shall:
- (i) Furnish a certificate of insurance to SCE, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written notice to SCE; and
 - (ii) Furnish to SCE an additional insured endorsement with respect to such insurance in substantially the following form:

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

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

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

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

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

10.12 Nondedication.

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

10.13 Mobile Sierra.

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

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

10.14 Simple Interest Payments.

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

10.15 Payments.

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

10.16 Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur in the event that certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 2.05(b), 3.01, 3.02, 3.04(e), 3.07 or 10.10 of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 12.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief shall not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 12.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and

injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if the Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

10.17 Seller Ownership and Control of Generating Facility.

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

10.18 Required Material.

Seller acknowledges and agrees that, notwithstanding anything to the contrary set forth herein, any review, approval, request, or requirement of any Required Material shall mean only that such Required Material is acceptable to SCE solely for SCE's internal purposes and benefit, and shall not in anyway be construed to mean that such Required Material is accurate, suitable for its intended purpose, in compliance with any Applicable Law or other requirement, or endorsed for the benefit of any other party, including Seller. Further, Seller acknowledges and agrees that SCE shall have no liability to Seller or any other third party with respect to any Required Material so reviewed, approved, requested or required by SCE or on SCE's behalf,

*** End of ARTICLE TEN ***

ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN

11.01 Changes Rendering this Agreement Incapable of Performance.

If a Change in CAISO Tariff renders this Agreement or any terms herein incapable of being performed or administered, or results, or could reasonably be forecasted to result, in a CAISO Change Cost Payment as defined herein for any Term Year, *then* either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered or to minimize CAISO Change Cost Payments, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

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

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

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

11.02 Changes Resulting in Costs or Benefits to Seller.

(a) CAISO Change Cost.

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

Hereinafter, the total net incremental changes in CAISO charges to Seller and Seller's Actual Revenue for any Term Year as a result of a Change in CAISO Tariff in the following specific circumstances shall be collectively referred to in the aggregate as the "CAISO Change Cost":

- (i) Upon the occurrence of congestion on the transmission system, the allocation of available transmission capacity among generators including Seller, impacting Seller's Delivered Amounts, Metered Amounts or congestion charges to Seller resulting therefrom; and

- (ii) The method of calculating, assessing and charging Seller for transmission losses for the delivery of electric energy from the Generating Facility to the Delivery Point including electrical losses occurring over the CAISO Grid, and any changes in Seller's Delivered Amounts resulting from the assessment of transmission losses thereto.

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

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

(b) CAISO Change Cost Payment.

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

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

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

11.03 Procedure for Claiming a CAISO Change Cost Payment.

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

If either Party believes that it is owed a CAISO Change Cost Payment for any Term Year, such Party shall, on or before the sixtieth (60th) day after the end of the Term Year, provide Notice to the other Party of its claim for the CAISO Change Cost Payment.

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

(b) Payment of Claim.

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

- (i) Pay the claim; or
- (ii) Provide Notice to the claiming Party that it disputes the claim and pay any portion of the claim which it does not dispute.

Any such Notice pursuant to item (ii) above shall set forth in detail the reason for such Party's dispute, and shall include the disputing Party's calculation of the CAISO Change Cost and any CAISO Change Cost Payment in accordance with Exhibit P as well as annotated workpapers and source data supporting the disputing Party's calculations.

(c) Disputed Claims.

The Parties shall negotiate in good faith to resolve any dispute regarding a claim for the CAISO Change Cost Payment and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as they each may possess which is requested by the other Party.

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

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

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

ARTICLE TWELVE. MEDIATION AND ARBITRATION

12.01 Dispute Resolution.

Other than requests for provisional relief under Section 10.16, any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement (“Dispute”), which Dispute the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, then for final and binding arbitration under the procedures described in Section 12.03 below.

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

12.02 Mediation.

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

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

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

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

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

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

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

impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided that* evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

12.03 Arbitration.

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

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

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

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

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

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

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

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

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration shall be in Los Angeles County, California.

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

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

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

Subject to Article Seven, the Arbitrator shall have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 2.05(b), 3.01, 3.02, 3.04(e), 3.07 or 10.10 of this Agreement.

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

The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

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

12.04 Waivers.

SELLER AGREES THAT SELLER WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE REQUIRING FORECLOSURE OF ANY RIGHTS GRANTED TO SCE BY SELLER UNDER ANY DEED OF TRUST BEFORE TAKING ANY ACTION DESCRIBED IN SECTIONS 12.02 AND 12.03 HEREOF.

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

Southern California Edison

Confidential Information

RAP ID# 5207, FSE Blythe 1, LLC

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

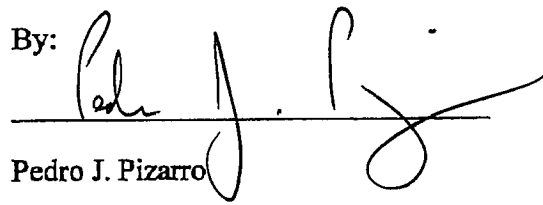
FSE BLYTHE 1, LLC,
a Delaware limited liability company

SOUTHERN CALIFORNIA EDISON COMPANY,
a California corporation.

By: 

Richard L. Gruber

*Vice President,
Project Development*

By: 

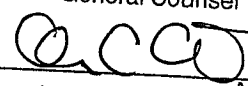
Pedro J. Pizarro

*Senior Vice President,
Power Procurement*

Date: December 20, 2007

Date: 12/21/2007

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

BY:  Attorney

12/20 2007

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

EXHIBIT A
Definitions

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

EXHIBIT A*Definitions*

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

1. "Actual Availability Report" has the meaning set forth in Section 3.21.
2. "Affiliate" means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

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

3. "Agreement" has the meaning set forth in the Preamble.
4. "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.
5. "Arbitrator" has the meaning set forth in Article Twelve.
6. "Availability Forecasts" has the meaning set forth in Exhibit D.
7. "Availability Update" has the meaning set forth in Exhibit D.
8. "Availability Workbook" has the meaning set forth in Exhibit S.
9. "Bankrupt" means with respect to any entity, such entity:
 - a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it;
 - b) Makes an assignment or any general arrangement for the benefit of creditors;
 - c) Otherwise becomes bankrupt or insolvent (however evidenced);
 - d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or
 - e) Is generally unable to pay its debts as they fall due.

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

10. "Business Day" means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
11. "Buyer" means Southern California Edison Company.
12. "CAISO" means the California Independent System Operator Corporation or successor entity.
13. "CAISO Approved Meter" has the meaning set forth in Section 3.06.
14. "CAISO Change Cost" has the meaning set forth in Section 11.02(a).
15. "CAISO Change Cost Payment" means a payment for any Term Year, either from SCE to Seller or from Seller to SCE, due to a CAISO Change Cost as described in Section 11.02(b).
16. "CAISO Change Cost Threshold Amount" means the threshold amount in Section 1.10 at the time any CAISO Change Cost Payment is calculated pursuant to Exhibit P.
17. "CAISO Charges" or "CAISO Charge" means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
18. "CAISO Declared Over-Generation Condition" means a CAISO declared condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
19. "CAISO Forecasted Over-Generation Condition" means a CAISO forecasted condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
20. "CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO Approved Meter.
21. "CAISO Grid" means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the CAISO's operational control.

22. "CAISO Revenues" or "CAISO Revenue" means the credits and other payments incurred or received by SCE as a result of test energy from the Generating Facility delivered to the real-time market by Seller during the Startup Period, including costs and revenues associated with CAISO dispatches.
23. "CAISO Sanctions" or "CAISO Sanction" means any sanction directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
24. "CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
25. "Calculation Period" means the twenty-four (24) month period immediately preceding the end of a Term Year.
26. "Capacity Attributes" means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
27. "CEC" means the California Energy Commission.
28. "CEC Certification and Verification" means certification (or, with respect to periods before the Generating Facility has been constructed, pre-certification) by the CEC that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
29. "CFR" means the Code of Federal Regulations, as may be amended from time to time.
30. "Change in CAISO Tariff" means that 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.
31. "Claiming Party" has the meaning set forth in Section 5.02.
32. "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the

subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

33. "Collateral Assignment Agreement" has the meaning set forth in Section 10.05.
34. "Confidential Information" has the meaning set forth in Section 10.10(b)(ii).
35. "Contract Capacity" means the electric energy generating capacity, set forth in Section 1.01(e), that Seller commits to install at the Site, net of Station Use.
36. "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.
37. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.
38. "CPUC" means the California Public Utilities Commission.
39. "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.
40. "Credit Rating" means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit

enhancement) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's,

then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody's, as the case may be.

41. "Cross Default Amount" means the dollar amount set forth in Section 1.08(c).
42. "Current Invertors" means devices used to convert direct current ("DC") electric energy to alternating current ("AC") electric energy.
43. "Daily Delay Liquidated Damages" has the meaning set forth in Section 3.04(c).
44. "Defaulting Party" has the meaning set forth in Section 6.01.
45. "Delivered Amounts" means the Metered Amounts adjusted by Delivery Losses.
46. "Delivery Losses" means all electric energy losses occurring between the CAISO Approved Meter and the Delivery Point and electric energy losses occurring over the CAISO Grid as such losses are assigned by the CAISO to the Generating Facility including, if applicable:
 - a) If the CAISO Approved Meter is not installed on the high voltage side of the Generating Facility's substation bus bar, transformer and other electric energy losses occurring between the CAISO Approved Meter and the high voltage side of the Generating Facility's substation bus bar;
 - b) Any applicable DLF or TLF, or if no DLF is applicable, *then* electric energy losses between the high voltage side of the Generating Facility's substation bus bar and the CAISO Grid; and
 - c) Electric energy losses determined by utilizing the GMM, or TMM if applicable, assigned to the Generating Facility.
47. "Delivery Point" means CAISO Zone SP-15.

Notwithstanding anything to the contrary in Article Eleven, after a Change in CAISO Tariff that impacts the trading points or trading rules thereof in CAISO Zone SP-15, the "Delivery Point" shall be a valid Scheduling point in SP-15 that is either:

- a) The SCE load aggregation point, if defined by the CAISO; or
- b) If an SCE load aggregation point is not defined by the CAISO, the CAISO-defined trading hub designated by SCE as most closely representing SCE's bundled customer load.

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48. "Delivery Term" means Term.
49. "Demonstrated Contract Capacity" has the meaning set forth in Section 3.04(e).
50. "Development Security" has the meaning set forth in Section 3.04.
51. "Disclosing Party" has the meaning set forth in Section 10.10.
52. "Disclosure Order" has the meaning set forth in Section 10.10.
53. "Dispute" has the meaning set forth in Article Twelve.
54. "Disqualified Stock" means any capital stock that, by its terms (or by the terms of any security into which such stock is convertible, or for which such stock is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety one (91) days after the expiration of the Term of this Agreement.
55. "DLF" means a number that is a representation for all net electric energy losses or avoided losses as determined by the CPUC associated with the transmission of electric energy through the electric system from the high voltage side of the Generating Facility's substation bus bar to the interface with the CAISO Grid, also known as the distribution loss factor.
56. "Early Termination Date" has the meaning set forth in Section 6.02.
57. "Effective Date" has the meaning set forth in the Preamble.
58. "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.

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59. "Energy Control Network" means the CAISO infrastructure network (data highway) used by all CAISO participants to exchange data to and from resources and CAISO.
60. "Energy Deviations" means the absolute value of the difference, in kWh, in any Settlement Interval between:
- a) The Final Hour-Ahead Schedule for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and
 - b) Delivered Amounts for the Settlement Interval.
61. "Energy Payment" has the meaning set forth in Section 4.02(b).
62. "Energy Payment Allocation Factor" has the meaning set forth in Exhibit K.
63. "Energy Price" means the energy price set forth in Section 1.06.
64. "Energy Replacement Damage Amount" has the meaning set forth in Section 3.05(b).
65. "Equitable Defense" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
66. "ERR" means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.
67. "Event of Default" has the meaning set forth in Section 6.01.
68. "Event of Deficient Energy Deliveries" has the meaning set forth in Section 3.05(a)(ii).
69. "Expected Annual Net Energy Production" means the Generating Facility's expected annual Qualified Amounts set forth in Section 1.01(f).
70. "Extraordinary SCE Force Majeure" means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting or Scheduling electric energy for more than ten (10) consecutive days during which Seller was prepared and able to deliver the Delivered Amounts at the Delivery Point.
71. "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.
72. "Federal Investment Tax Credit Legislation" means validly enacted Federal legislation extending the applicability and rate of the investment tax credit (26 U.S.C.

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§ 48) to owners of generating facilities which use solar energy to produce electric energy which are placed in service on or before December 31, 2008, or such other date as may be agreed to in a writing signed by both Parties, on terms no less favorable to owners of solar energy generating facilities, including Seller, than those terms available with respect to such facilities placed in service on or after January 1, 2007 and before January 1, 2009 pursuant to the law governing Investment Tax Credits as in effect on the Effective Date.

73. "FERC" means the Federal Energy Regulatory Commission.
74. "Final Hour-Ahead Schedule" has the meaning as set forth in the CAISO Tariff.
75. "Final Schedule" has the meaning as set forth in the CAISO Tariff.
76. "Firm Operation Date" means Phase 1 Firm Operation Date and/or Phase 2 Operation Date, as applicable.
77. "Force Majeure" means any occurrence that was not anticipated as of the Effective Date that:
- a) In whole or in part:
 - i) Delays a Party's performance under this Agreement;
 - ii) Causes a Party to be unable to perform its obligations; or
 - iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
 - b) Is not within the control of that Party; and
 - c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO (except as set forth below) *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.

Force Majeure does not include:

- d) The lack of wind, sun or other fuel source of an inherently intermittent nature; or

- e) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the CAISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.
78. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting to SCE, in accordance with Exhibit D, the Availability Forecasts.
79. "Forecasted Initial Operation Date" means the date Seller anticipates, as of the Effective Date, will be the Phase 1 Initial Operation Date.
80. "Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.

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

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

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

81. "Full Development Security" has the meaning set forth in Section 3.04.
82. "GAAP" means generally accepted accounting principles.
83. "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 transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement, and shall include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

- Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, *then* the Non-Defaulting Party may use information available to it internally suitable for such purpose in accordance with prudent industry practices.
84. “Generating Facility” means Seller’s electric generating facility as more particularly described in Exhibit B, including Phase 1 Capacity and Phase 2 Capacity, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at such facility, excluding the Site, land rights and interests in land.
85. “Generating Facility Capacity” means the Generating Facility’s total rated electric alternating current energy generating capacity determined as the lesser of:
- a) The sum of the manufacturer’s nameplate ratings of all installed Solar Generating Units, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to the Solar Generating Units; or
 - b) The sum of the manufacturer’s output rating of all installed Current Invertors, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplates physically attached to the Current Invertors.
86. “Generating Facility Power Curve” means a table used to estimate the Generating Facility’s Metered Amounts as a function of the recorded solar insolation at the Site as described in Exhibit M.
87. “Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor the Generating Facility.
88. “Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.
89. “GMM(s)” means the generation meter multipliers as determined by the CAISO representing the calculation of all electrical losses assigned to the Generating Facility associated with the transmission of electric energy delivered by the Generating Facility over the CAISO Grid. As of the Effective Date, such values are posted by the CAISO on its website. The values used in this Agreement shall be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.
90. “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.
91. "Governmental Charges" has the meaning as set forth in Section 9.02.
92. "Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as:
- (1) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
 - (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;
 - (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 landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

- 93. “Guarantor” has the meaning set forth in Section 1.08.
- 94. “Guaranty Agreement” means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
- 95. “Initial Operation” means Phase 1 Initial Operation and/or Phase 2 Initial Operation, as applicable.
- 96. “Initial Operation Date” means Phase 1 Initial Operation Date and/or Phase 2 Initial Operation Date, as applicable.
- 97. “Initial Synchronization” means the date upon which the Generating Facility is first synchronized with Seller’s Transmission Provider.
- 98. “Interconnection Study” means any of the following studies as may be defined in the CAISO’s Tariff or the Transmission Provider’s tariff, as applicable:
 - a) An interconnection feasibility study;
 - b) A System Impact Study; or
 - c) An interconnection facilities study.
- 99. “Interest Rate” means an annual rate equal to:
 - a) The rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus

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- b) Two percentage points (2%);
- provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
100. "Investment Tax Credit" or "ITC" means investment tax credits under Section 48 of the Internal Revenue Code as in effect from time-to-time during the Term or any successor or other provision providing for a federal tax credit determined by reference to 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.
101. "JAMS" has the meaning set forth in Article Twelve.
102. "kW" means a kilowatt of electric energy generating capacity.
103. "kWh" means a kilowatt-hour of electric energy.
104. "Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.01(b) from a third party, the term of which lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
105. "Lender" means any financial institution(s) or successor(s) in interest or assignees that provide(s) development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.
106. "Letter of Credit" means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit N and acceptable to SCE. All Letter of Credit costs shall be borne by Seller.
107. "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:
- a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;
 - b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
 - d) Such Letter of Credit fails or ceases to be in full force and effect at any time;

- e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates; or
- f) The issuer of such Letter of Credit becomes Bankrupt;

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

108. "Local Business Day" means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the location specified in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.
109. "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 transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Term of this Agreement and shall include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

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

110. "Lost Output" means the reduction in Qualified Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit M, but was not delivered due to:
- a) Force Majeure; or

- b) An Event of Default where SCE is the Defaulting Party.
111. "Lost Output Report" means the report of Lost Output in the form of the Lost Output Workbook prepared in accordance with the procedures set forth in Section 3.19 and Exhibit M.
112. "Lost Output Workbook" has the meaning set forth in Exhibit M.
113. "Market Price" means the CAISO Real-Time Price for uninstructed deviations or any successor price for short term imbalance electric energy, as such price or successor price is defined in the CAISO Tariff Appendix A, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website.
- The values used in this Agreement will be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such prices are being applied.
114. "Market Price Referent" means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).
115. "Maximum Contract Capacity" has the meaning set forth in Section 1.01(e).
116. "Mediator" has the meaning set forth in Article Twelve.
117. "Meteorological Equipment" has the meaning set forth in Section 3.06(e).
118. "Metered Amounts" means the electric energy produced by the Generating Facility and expressed in kWh, as measured by the CAISO Approved Meter.
119. "Meter Service Agreement" has the meaning set forth in the CAISO Tariff.
120. "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.
121. "Moody's" means Moody's Investor Services, Inc.
122. "MW" means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
123. "MWh" means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
124. "Non-Defaulting Party" has the meaning set forth in Section 6.02.

125. "Notice" means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
126. "Non-Disclosure Agreement" has the meaning set forth in Section 10.10(b)(i).
127. "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.
128. "Operate," "Operating" or "Operation" means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
129. "Outage Schedule" has the meaning set forth in Section 3.13.
130. "Output Guarantee/Warranty" means a production performance warranty provided by the manufacturer of the solar panels installed at the Site.
131. "Participating Generator Agreement" has the meaning set forth in the CAISO Tariff.
132. "Participating Intermittent Resource" means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the CAISO Tariff.
133. "Participating Intermittent Resource Program" or "PIRP" means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the California CAISO Tariff in Docket No. ER02-922-000 or any successor program that SCE determines accomplishes a similar purpose.
134. "Party" or "Parties" have the meaning set forth in the Preamble.
135. "Performance Assurance" means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.07) for Seller's performance under this Agreement in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
136. "Performance Assurance Amount" means the collateral amount for Performance Assurance set forth in Section 1.07.
137. "Performance Tolerance Band" has the meaning set forth in Exhibit Q.
138. "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.

139. "Permit Approval" means approval, by the relevant regulatory agencies, of all Permits required to develop, construct and operate the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to SCE. Permit Approval with respect to any Permit shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by the pendency of an appeal or other opposition to such Permit.
140. "Permitted Liens" means (a) liens for taxes, assessments or governmental charges not yet due or delinquent or that are being contested in good faith; (b) minor defects, easements, rights-of-way, restrictions and similar encumbrances incurred in the ordinary course of business and encumbrances consisting of zoning restrictions, licenses, use restrictions or minor imperfections in title that, individually or in the aggregate, do not materially impair the property or interfere with the development or operation of the Generating Facility; (c) materialmens', mechanics', workers', repairmens', employees' or other similar liens arising in the ordinary course of business for amounts not yet due or delinquent or that are being contested in good faith; or (d) purchase money liens for property related to the construction, operation and maintenance of the Generating Facility that has been purchased by Seller to secure the purchase price of such property.
141. "Phase" means Phase 1 and/or Phase 2, as applicable.
142. "Phase 1" has the meaning set forth in Section 1.01(e).
143. "Phase 1 Capacity" has the meaning set forth in Section 1.01(e).
144. "Phase 1 Firm Operation Date" has the meaning set forth in Section 1.04.
145. "Phase 1 Initial Operation" has the meaning set forth in Section 1.01(e).
146. "Phase 1 Initial Operation Date" has the meaning set forth in Section 2.03(b).
147. "Phase 1 Startup Deadline" means the date set forth in Section 1.03 by which Seller must have achieved Phase 1 Initial Operation as set forth in Section 2.03, subject to extension as provided in this Agreement.
148. "Phase 2" has the meaning set forth in Section 1.01(e).
149. "Phase 2 Capacity" has the meaning set forth in Section 1.01(e).
150. "Phase 2 Determination Date" has the meaning set forth in Section 1.01(e).

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151. "Phase 2 Firm Operation Date" has the meaning set forth in Section 1.04.
152. "Phase 2 Initial Operation Date" has the meaning set forth in Section 2.03(c).
153. "Phase 2 Startup Deadline" means the date set forth in Section 1.03 by which Seller must have achieved Phase 2 Initial Operation as set forth in Section 2.03, subject to extension as provided in this Agreement.
154. "Product" means:
- a) All electric energy produced by the Generating Facility, net of Station Use and Delivery Losses; and
 - b) All Green Attributes, Capacity Attributes, and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility.
155. "Project" means the Generating Facility.
156. "Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

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

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

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

- Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
 - f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
157. "Qualified Amounts" means the Metered Amounts, expressed in kWh, that qualify as eligible renewable energy for purposes of the RPS Legislation.
158. "Quarterly Statement" has the meaning set forth in Section 3.05(c).
159. "RAP ID" has the meaning set forth in Section 10.08.
160. "Real-Time Availability" has the meaning set forth in Section 3.06(f).
161. "Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.
162. "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.
163. "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.

164. "Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Term.
165. "Responsible Officer" means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing.
166. "RPS Legislation" means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
167. "S&P" means the Standard & Poor's Rating Group.
168. "SC Schedules" means the amounts initially submitted to the CAISO by SCE, as Scheduling Coordinator for Seller, of expected electric energy that Seller expects to deliver to SCE in each hour.
169. "SCE" has the meaning set forth in the Preamble.
170. "SCE Penalty" or "SCE Penalties" 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.
171. "SCE's Projected Energy Forecast" has the meaning set forth in Exhibit D.
172. "Schedule," "Scheduled" or "Scheduling" means the action of SCE in submitting the SC Schedules to the CAISO and receiving the Final Schedules from the CAISO.
173. "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.
174. "SEC" has the meaning set forth in Section 8.01(a).
175. "Secured Interest" has the meaning set forth in Section 8.04(a).
176. "Security Documents" has the meaning set forth in Section 8.04(a).
177. "Security Interests" has the meaning set forth in Section 8.03.
178. "Seller" has the meaning set forth in the Preamble.
179. "Seller's Actual Revenue" has the meaning set forth in Exhibit P.

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

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

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

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

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

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

- 182. "Seller's Debt to Equity Ratio" means the ratio of Seller's Debt to Seller's Equity.
- 183. "Seller's Energy Delivery Obligation" has the meaning set forth in Section 3.05(a)(i).
- 184. "Seller's Equity" means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with GAAP.
- 185. "Seller's Transmission Consultant" means an independent consultant selected by Seller to analyze the scope of congestion or curtailments that may be experienced by

- the Generating Facility during the Term, or transmission upgrades that may be required to mitigate congestion or curtailments.
186. "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.).
187. "Settlement Interval Actual Available Capacity" means the sum of the capacity, in MWs, of all Current Invertors of the Generating Facility that were available as the end of such Settlement Interval, as indicated by the Actual Availability Report.
188. "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.
189. "Site" means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B or as adjusted in accordance with Section 3.08.
190. "Site Control" has the meaning set forth in Section 3.07(a).
191. "Solar Generating Unit" or "Solar Generating Units" means the solar photovoltaic arrays installed on the Site as part of the Generating Facility including any replacements or substitutes therefore.
192. "Solar Resource Evaluation Report" means a report concerning the electric energy producing potential of the Site.
193. "Startup Deadline" means the Phase 1 Startup Deadline and/or the Phase 2 Startup Deadline, as applicable.
194. "Startup Period" has the meaning set forth in Section 3.11(a)(i).
195. "Station Use" means the electric energy produced by the Generating Facility that is either:
- a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; or
 - b) Consumed within the Generating Facility's electric energy distribution system as losses.

196. "Supplemental Lost Output" has the meaning set forth in Section 3.19.
197. "Supplemental Lost Output Report" has the meaning set forth in Section 3.19.
198. "System Impact Study" means an engineering study that evaluates the impact of Seller's proposed interconnection on the safety and reliability of the CAISO Grid.
199. "Term" has the meaning used in Section 1.05.
200. "Term Year" means a twelve (12) month period beginning on the first day of the calendar month following the Phase 2 Firm Operation Date and each successive twelve (12) month period thereafter.
201. "Termination Payment" has the meaning set forth in Section 6.03.
202. "TMM(s)" means the tie meter multipliers as determined by the CAISO representing the calculation of all electrical losses over the CAISO Grid associated with the transmission of electric energy delivered at a CAISO Control Area boundary, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement shall be those appearing on the CAISO website on the third (3rd) Business Day of the calendar month following the month for which such values are being applied.
203. "TOD Period(s)" means the time and season of delivery period(s) set forth in Exhibit K.
204. "TOD Period Energy Payment" means a portion of an Energy Payment based upon the time of delivery of Product and calculated in accordance with the formula set forth in Section 4.02(b).
205. "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.
206. "Unincluded Capacity" has the meaning set forth in Section 3.04(e).
207. "WECC" means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
208. "Web Client" shall have the meaning set forth in Section 3.13.
209. "WREGIS" has the meaning set forth in Section 3.01(d)(iv).

*** End of EXHIBIT A ***

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

EXHIBIT B

Generating Facility and Site Description

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

EXHIBIT B

Generating Facility And Site Description

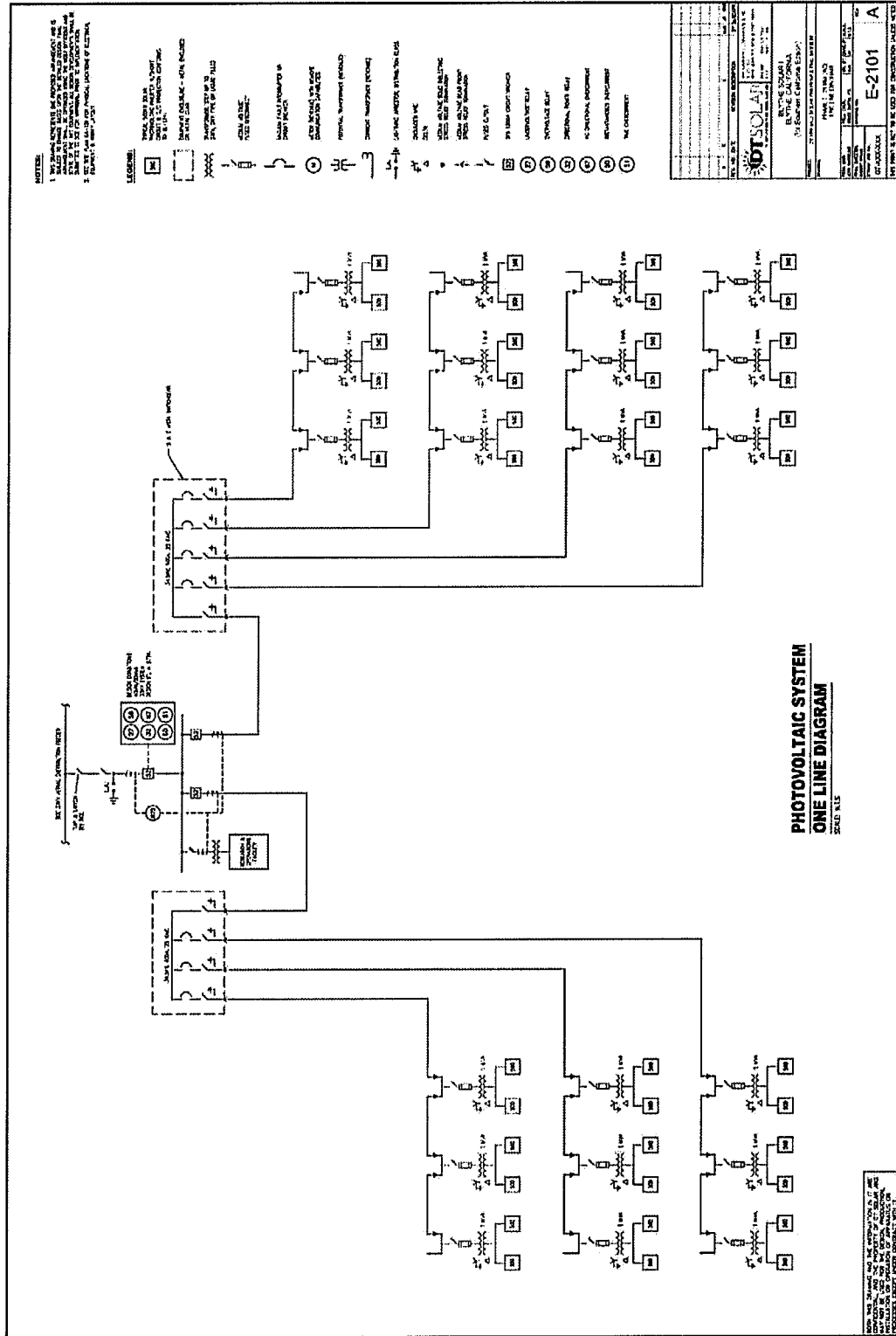
1. Generating Facility Description.

The Generating Facility will use First Solar FS-275 modules or equivalent. The total capacity of the project is 21 MW AC, to be built in two phases. Phase 1 will be 7.5 MW AC and Phase 2 will be 13.5 MW AC. The project will use 42 inverters, Xantrex GT-500E or equivalent, with 500 kW capacities.

The photovoltaic system will consist of twenty one (21) arrays of panels, each with a capacity of 562.5 kW DC each, and twenty one (21) arrays with a capacity of 558 kW DC each. However, at the time of construction, the typical array configuration may change due to increased performance capability of the modules. This will not affect the total sizing of the array or the number of inverters used for the project.

All equipment after the inverters will be standard UL equipment. The inverters will tie into 33 kV step up transformers.

RAP ID# 5207, FSE Blythe 1, LLC



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2. Site Description.

The northern edge of the site is located west of Blythe, CA approximately 1 mile south of I-10 and 1 mile west of the intersection of Mesa Drive and 15th Ave. The coordinates are Latitude 33° 35' 26" N and Longitude 114° 44' 53" W. The current site is a total of 120 acres, with an additional 80 acres currently under negotiation for purchase. The land is currently used for agricultural purposes, and the zoning allows the land to be used for utility equipment and power generation and transmission purposes. The site is level and well suited for a photovoltaic installation. It will not require significant clearing or preparation in order to begin construction of the project

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Riverside, Unincorporated Area, described as follows:

PARCEL 1:

THE EAST HALF OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 21 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE PALO VERDE IRRIGATION DISTRICT, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPT FROM SAID PARCEL 5 ALL OIL, GAS, OIL SHALE, COAL, PHOSPHATE, SODIUM, GOLD, SILVER AND ALL OTHER MINERAL DEPOSITS CONTAINED IN SAID LANDS, AND THE RIGHT TO DRILL FOR AND EXTRACT SUCH DEPOSITS OF OIL AND GAS, OR GAS AND TO PROSPECT FOR, MINE AND REMOVE SUCH DEPOSITS OF OTHER MINERALS FROM SAID LANDS AND TO OCCUPY AND USE SO MUCH OF THE SURFACE OF SAID LANDS AS MAY BE REQUIRED THEREFORE UPON COMPLIANCE WITH THE CONDITIONS AND SUBJECT TO THE PROVISIONS AND LIMITATIONS OF CHAPTER 5, PART I, DIVISION 6 OF THE PUBLIC RESOURCES CODE, AS RESERVED TO THE STATE OF CALIFORNIA IN THE PATENT RECORDED APRIL 2, 1954 AS INSTRUMENT NO. 16495 IN BOOK 1571 PAGE 499 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM ALL OIL, GAS, OIL SHALE, COAL, PHOSPHATE, SODIUM, GOLD, SILVER AND ALL OTHER MINERAL DEPOSITS CONTAINED IN SAID LANDS, AND THE RIGHT TO DRILL FOR AND EXTRACT SUCH DEPOSITS OF OIL AND GAS, OR GAS AND TO PROSPECT FOR, MINE AND REMOVE SUCH DEPOSITS OF OTHER MINERALS FROM SAID LANDS AND TO OCCUPY AND USE SO MUCH OF THE SURFACE OF SAID LANDS AS MAY BE REQUIRED THEREFORE UPON COMPLIANCE WITH THE CONDITIONS AND SUBJECT TO THE PROVISIONS AND RESOURCES CODE, AS RESERVED TO THE STATE OF CALIFORNIA IN THE PATENT RECORDED APRIL 2, 1954 AS INSTRUMENT NO. 16495 IN BOOK 1571 PAGE 499, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

THE SOUTH 30 FEET OF THE SOUTHWEST QUARTER, TOGETHER WITH THE SOUTH 30 FEET OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 21 EAST, SAN BERNARDINO BASE AND MERIDIAN, COUNTY OF RIVERSIDE STATE OF CALIFORNIA.

End of Legal Description

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



*** End of EXHIBIT B ***

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

EXHIBIT C
Notice List

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

Southern California Edison

Confidential Information

RAP ID# 5207, FSE Blythe 1, LLC

EXHIBIT C

Notice List

FSE BLYTHE 1, LLC ("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
All Notices are deemed provided in accordance with Section 10.08 if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address or facsimile number provided below:
Contract Sponsor: Attn: Richard L. Gruber Street: 1250 S Capital of Texas Hwy Bldg 3, Suite 400 City: Austin, Texas 78746 Phone: 512-771-1555 Facsimile: 512-329-2084	Contract Sponsor: Attn: Director, Renewable and Alternative Power Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-1212 Facsimile: (626) 302-1103
Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Contract Administration: Attn: Rachel Shriver Phone: 512-329-2087 Facsimile: 512-329-2084	Contract Administration: Attn: Pam Snethen Phone: (626) 302-9493 Facsimile: (626) 302-9116
Forecasting: Attn: Control Room Phone: 908-526-7900 Facsimile: 908-526-7911	Generation Operations Center: Phone: (626) 307-4453 or Phone: (626) 307-4410

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

Southern California Edison

Confidential Information

RAP ID# 5207, FSE Blythe 1, LLC

FSE BLYTHE 1, LLC ("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Day-Ahead Forecasting: Phone:	Day-Ahead Scheduling: <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302-1323 Facsimile: (626) 302-3409 <u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 302-3409 Email: PreSched@SCE.com
Real-Time Forecasting: Phone:	Real-Time Scheduling: <u>Manager.</u> Attn: Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 302-3409 <u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 302-3409 Email: RealTime@SCE.com
Payment Statements: Attn: Michele Feneran Phone: 908-526-7900 ext. 109 Facsimile: 908-526-7911 Email:	Payment Statements: Attn: SCS Payments Phone: (626) 302-9272 Facsimile: (626) 302-6524 Email: ContractSettlements@SCE.com
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: Email:	CAISO Charges, CAISO Sanctions and SCE Penalties: Attn: SCS Payments Phone: (626) 302-9272 Facsimile: (626) 302-6524 Email: ContractSettlements@SCE.com

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

Southern California Edison

Confidential Information

RAP ID# 5207, FSE Blythe 1, LLC

FSE BLYTHE 1, LLC ("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
Payments: Attn: Michele Feneran Phone: 908-526-7900 ext. 109 Facsimile: 908-526-7911 Email:	Payments: Attn: SCE Payments Phone: (626) 302-9272 Facsimile: (626) 302-6524 Email: ContractSettlements@SCE.com
Wire Transfer: BNK: Sun Trust Commercial Bank ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: JP Morgan Chase Bank ABA: [REDACTED] ACCT: [REDACTED]
Credit and Collections: Attn: Phone: Facsimile: Email:	Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302-1129 Facsimile: (626) 302-2517
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Richard L. Gruber Phone: 512-771-1555 Facsimile: 512-329-2084 Email:	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904
Guarantor: Attn: Phone: Facsimile: Email:	
Lender: Attn: Phone: Facsimile: Email:	

*** End of EXHIBIT C **

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

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

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

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

1. Introduction.

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

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

2. Seller's Availability Forecasting Requirements.

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

- (a) No later than thirty (30) days prior to Initial Synchronization, Seller shall provide SCE with a 30-day, hourly forecast of the expected available total generation capacity of the Generating Facility, in MW, ("Availability Forecast"), for the thirty (30) day period commencing on Initial Synchronization using the Web Client.

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

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

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

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

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

Seller learns of any change in the available capacity of the Generating Facility for a period covered by the most recent Availability Forecast update resulting from any cause, including, but not limited to, an unplanned outage, prior to the time that the next weekly update of the Availability Forecast is due which results in variance in available capacity in any hour of plus (+) or minus (-) three percent (3%) from the available capacity reported in the most recent Availability Forecast update, Seller shall provide an updated Availability Forecast to SCE. This updated Availability Forecast must be submitted to SCE via the Web Client by no later than:

- (iv) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time;
- (v) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or

- (vi) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after Seller becomes aware of the event which caused the availability change.

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

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

3. SCE's Scheduling Responsibilities.

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

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

4. Seller's Outage Scheduling Requirements.

Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation outage scheduling contained in the CAISO's Scheduled and Forced Outage Procedure T-113 as posted on the CAISO's website.

*** End of EXHIBIT D ***

EXHIBIT E
Intentionally deleted

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

EXHIBIT E

Intentionally deleted

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

EXHIBIT F

Energy Replacement Damage Amount

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

EXHIBIT F*Energy Replacement Damage Amount*

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

ENERGY REPLACEMENT DAMAGE AMOUNT =

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

Where:

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

Notes:

1. In the above calculation, the result of "(D - E)" shall not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh.
2. If the result of the calculation above is zero or less, Seller shall not be obligated to pay an Energy Replacement Damage Amount.
3. In no event shall SCE pay an Energy Replacement Damage Amount.

*** End of EXHIBIT F ***

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

EXHIBIT G

Seller's Milestone Schedule

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

EXHIBIT G
Seller's Milestone Schedule

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	8/15/2007	Submits interconnection application.
2	4/25/2008	Receives a completed Interconnection Facility Study.
3	2/6/2009	Receives a completed System Impact Study.
4	3/20/2009	Executes a Transmission Owner Tariff and/or applicable service agreement.
5	6/12/2009	Receives FERC acceptance of Interconnection Agreement and transmission agreement(s).
6	1/11/2008	Files any land applications.
7	1/11/2008	Files Permit application(s).
8	12/19/2008	Receives all Permits required to develop, construct and Operate the Generating Facility.
9	3/7/2008	Files a CEC Certification and Verification application.
10	12/12/2008	Receives CEC Certification and Verification.
11	1/18/2008	Obtains control of all lands and rights-of-way comprising the Site.
12	6/05/2009	Executes an Engineering, Procurement and Construction ("EPC") contract.
13	6/12/2009	Completes Financing.
14	6/19/2009	Begins construction of Phase 1 Generating Facility.
15	9/25/2009	Begins Phase 1 startup activities.
16	10/23/2009	Achieves Phase 1 Initial Operation.
17	10/30/2009	Demonstrates the Phase 1 Contract Capacity.
18	9/11/2009	Begins construction of Phase 2 of the Generating Facility.
19	2/26/10	Begins startup activities for Phase 2.
20	5/21/10	Achieves Phase 2 Initial Operation.
21	10/8/10	Demonstrates the Phase 2 Capacity.

*** End of EXHIBIT G ***

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

EXHIBIT H

Milestone Progress Reporting Form

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

EXHIBIT H*Milestone Progress Reporting Form*

Seller shall prepare a written report each month on its progress relative to the development construction and startup of the Generating Facility and the Milestone Schedule. The report shall be sent via email in the form of a single Adobe Acrobat file or facsimile to SCE's Contract Administrator, as noted in Exhibit C, on the fifth (5th) Business Day after each month.

Seller's obligation to complete a Milestone Progress Reporting Form for the preceding month and submit such report to SCE shall begin on the first day of the first full calendar month after the Effective Date of this Agreement and shall end immediately after a Milestone Progress Reporting Form is completed and submitted for the month in which the Phase 2 Firm Operation Date occurs.

Each Milestone Progress Report shall include the following items:

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

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

RAP ID# 5207, FSE Blythe 1, LLC

13. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Generating Facility performance including performance projections for the next twelve (12) months.
14. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Generating Facility, Transmission Provider's electric system and all other interconnection utility services.

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

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

EXHIBIT I

Form of Guaranty Agreement

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

EXHIBIT I

Form of Guaranty Agreement

1. Guaranty.

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

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

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

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

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

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

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

2. Guaranty Limit.

Subject to Paragraph 13, the liability of Guarantor hereunder shall not exceed \$_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute.

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

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

- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;
- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to

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

release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;

- (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
- (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
- (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (x) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
- (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. Termination; Reinstatement.

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

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

- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

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

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

5. Bankruptcy; Post-Petition Interest.

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

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

- (b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

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

6. Subrogation.

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

If any amount shall be paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been indefeasibly paid in full, Guarantor shall

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

hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

7. Subordination.

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

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

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

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

- (b) If Beneficiary so requests:

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

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

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

8. Waivers of Guarantor.

- (a) Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this Guaranty or the enforcement of this Guaranty.
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

- a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
- b. If the creditor forecloses on any real property collateral pledged by the debtor:
 - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

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

- (ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
 - (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
 - (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason other than full performance or payment;
 - (f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
 - (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;
 - (i) Other than demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
 - (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary.

No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise

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

10. Assignment, Successors and Assigns.

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

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

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

11. Representations of Guarantor.

Guarantor hereby represents and warrants that:

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

12. Financial Statements.

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

13. Attorneys’ Fees.

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

Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 shall not be subject to, and shall not count toward, the guaranty limit set forth in Paragraph 2 above.

14. Governing Law.

This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles.

If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction.

All parties to this Guaranty are represented by legal counsel.

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

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

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

16. Amendment; Severability.

Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

17. Third Party Rights.

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

18. Notices.

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

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

Southern California Edison

Confidential Information

RAP ID# 5207, FSE Blythe 1, LLC

the person and at the address for notices specified below.

Beneficiary:

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

with a copy to:

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: _____
Phone: (626) _____
Facsimile: (626) _____

with an additional copy to:

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

Guarantor:

[Guarantor]
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Principal:

[Principal]
[Street]
[City, State Zip]
Attn:
Phone:

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

Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

RAP ID# 5207, FSE Blythe 1, LLC

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

_____ *[legal name]* _____

By: _____

Name: _____

Title: _____

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

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

EXHIBIT J

Non-Disclosure Agreement

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

EXHIBIT J

Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

TURNER RENEWABLE ENERGY, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and Turner Renewable Energy, LLC ("TRE"), a New Jersey Limited Liability Corporation, hereby enter into this Non-Disclosure Agreement ("Agreement").

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

RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources ("ERRs") on March 12, 2007, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. TRE desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by TRE to SCE as part of TRE submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to TRE as part of discussions or negotiations with TRE concerning TRE Proposal.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

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

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

2. The Parties agree to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by both Parties in writing.

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

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

3. SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission ("CPUC"), (ii) the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 ("PRG"), (iii) the California Energy Commission ("CEC") and (iv) the California Independent System Operator ("CAISO").

Although SCE will seek confidential treatment of any Confidential Information submitted by it to the CPUC, by means of a motion for protective order under Public Utilities Code section 583 and General Order 66-C, or by appropriate application to or agreement with, the PRG, CAISO and CEC, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into.

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

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

- sold to SCE under any agreement reached as a result of discussions or negotiations.
4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:
 - a. Information which is in the public domain as of the Effective Date of this Agreement or which later comes into the public domain from a source other than from the other Party or its Permitted Disclosee;
 - b. Information which SCE or TRE can demonstrate in writing was already known to SCE or TRE prior to the effective date of this Agreement;
 - c. Information which comes to SCE or TRE from a *bona fide* third party source not under an obligation of confidentiality;
 - d. Information which is independently developed by SCE or TRE without use of or reference to Confidential Information or information containing Confidential Information; or
 - e. The fact that TRE submitted a Proposal in response to the RFP.
 5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.
 6. Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

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

7. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as SCE or TRE may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.

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

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 TRE: Turner Renewable Energy, LLC
3121 Route 22 East, Suite 304
Branchburg, NJ 08876
Attention: Thomas Kuster
Telephone: 908-526-7900
Facsimile: 908-526-7906

10. This Agreement shall be effective as of the date of the last signature to this Agreement and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").
11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

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

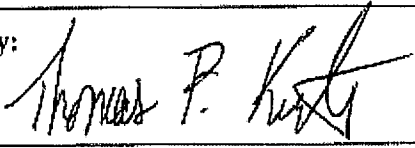
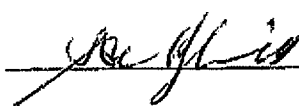
12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

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

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

[Remainder of page left blank intentionally.]

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

TURNER RENEWABLE ENERGY, LLC, A New Jersey limited liability corporation.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By:  Thomas P. Kuster, CEO	By: 
Date: May 17, 2007	Date: 6/18/07

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

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

FIRST SOLAR, INC. and FIRST SOLAR ELECTRIC, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, on the one hand, and First Solar, Inc., a Delaware corporation ("FSI") and First Solar Electric, LLC, a Delaware limited liability company ("FSE"), collectively, "First Solar" on the other hand, hereby enter into this Non-Disclosure Agreement ("Agreement").

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

RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources ("ERRs") on March 12, 2007, with a goal of negotiating and executing renewable power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. Turner Renewable Energy, LLC ("Bidder") submitted a proposal in response to the RFP and subsequently entered into a transaction with First Solar pursuant to which First Solar wishes to assume the interests of Bidder with respect to the Proposal and a possible renewable power purchase agreement with SCE.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by Bidder, First Solar or SCE as part of Bidder's submission of a proposal in response to the RFP (the "Proposal") or as part of discussions or negotiations between SCE and Bidder or First Solar concerning a renewable power purchase agreement.

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

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, the following shall be referred to as "Confidential Information": (i) all oral or written communications exchanged between Bidder and SCE regarding the Proposal; (ii) the negotiations between SCE and Bidder regarding the proposed terms and conditions of a power purchase agreement with SCE; and (iii) all oral or written communications exchanged between SCE and First Solar regarding any proposed renewable power purchase agreement.

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

2. The Parties agree to treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by both Parties in writing.

Accordingly, Parties may disclose Confidential Information only to their employees, directors, financial advisors, attorneys, or accountants who have a strict need to know solely for the purpose of assisting the Party in evaluating the Proposal, or in subsequent discussions or negotiations regarding the Proposal and who read and agree to abide by this Agreement ("Permitted Disclosee"). Bidder shall be deemed a Permitted Disclosee of First Solar. Each Party shall be responsible for any breach of this Agreement by its Permitted Disclosees.

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

3. SCE may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the RFP: (i) the California Public Utilities Commission ("CPUC"), (ii) the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 ("PRG"), (iii) the California Energy Commission ("CEC") and (iv) the California Independent System Operator ("CAISO").

Although SCE will seek confidential treatment of any Confidential Information submitted by it to the CPUC, by means of a motion for protective order under

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

Public Utilities Code section 583 and General Order 66-C, or by appropriate application to or agreement with, the PRG, CAISO and CEC, SCE may disclose Confidential Information under this Paragraph even if no protective order is issued and no confidentiality or non-disclosure agreements are entered into.

SCE may also disclose Confidential Information as may be reasonably required to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations.

4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term "Confidential Information" shall not include:
 - a. Information which is in the public domain as of the Effective Date of this Agreement or which later comes into the public domain from a source other than from the other Party or its Permitted Disclosee;
 - b. Information which SCE or First Solar can demonstrate in writing was already known to SCE or First Solar (from a source other than their respective Permitted Disclosees) prior to the Effective Date of this Agreement;
 - c. Information which comes to SCE or First Solar from a *bona fide* third party source, other than their respective Permitted Disclosees, that is not under an obligation of confidentiality;
 - d. Information which is independently developed by SCE or First Solar without use of or reference to Confidential Information or information containing Confidential Information; or
 - e. The fact that Bidder submitted a Proposal in response to the RFP.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.
6. Confidential Information submitted to a Party in hard copy or electronic form shall bear on each page the following legend:

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

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

7. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as SCE or 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.
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 First Solar:

 FSE Blythe 1, LLC

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

400 Somerset Corporate Blvd.
Suite 501
Bridgewater, New Jersey 08807
Telephone:
Facsimile:

With copy to:

Telephone:
Facsimile:

10. This Agreement shall be effective as of the date of the last signature to this Agreement and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").

11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

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

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

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

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

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

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

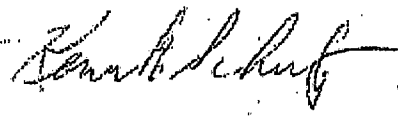
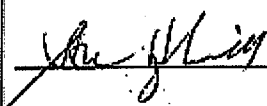
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.

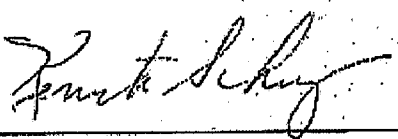
The contents of this document are subject to restrictions on disclosure as set forth herein.

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

[Remainder of page left blank intentionally.]

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

First Solar, Inc., a Delaware corporation	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By: 	By: 
Date: 12-14-07	Date: 12/17/07

First Solar Electric, LLC, a Delaware limited liability company
By: 
Date: 12-14-07

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

Southern California Edison

Confidential Information

RAP ID# 5207, FSE Blythe 1, LLC



FSE Blythe 1, LLC
400 Somerset Corporate Boulevard
Suite 501
Bridgewater, NJ 08807 USA
Phone: +1 (908) 526-7900
Fax: +1 (908) 526-7911
Info@firstsolar.com
www.firstsolar.com

December 18, 2007

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

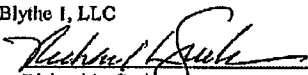
Attn: Director of Renewable and Alternative Power

Reference is made to that certain Non-Disclosure Agreement between First Solar, Inc. ("First Solar"), a Delaware corporation, First Solar Electric, LLC ("FSE"), a Delaware limited liability company, and Southern California Edison Company ("SCE"), a California corporation, dated on or about December 17, 2007, and attached hereto (the "NDA").

This letter confirms that, in exchange for SCE's including FSE Blythe 1, LLC ("FSE Blythe 1") in its negotiations with First Solar and FSE concerning the terms of a possible power purchase and sale agreement of renewable energy, FSE Blythe 1, LLC, a Delaware limited liability company, has read the attached NDA, and agrees to be bound by the NDA along with and to the same extent as First Solar and FSE, and agrees to make all of the terms and conditions contained in the NDA with respect to First Solar and FSE legally enforceable against FSE Blythe 1.

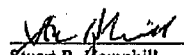
Sincerely,

FSE Blythe 1, LLC

By: 
Name: Richard L. Gruber
Title: Vice President, Project Development

Agreed and accepted this 19th day of December, 2007

SOUTHERN CALIFORNIA EDISON COMPANY

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

FSE Blythe 1, LLC

*** End of EXHIBIT J ***

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

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

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

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

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

<u>Energy Payment Allocation Factors</u>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Energy Payment Allocation Factor</i>
Summer	On-Peak	Fixed Value.	3.28
	Mid-Peak	Fixed Value.	1.28
	Off-Peak	Fixed Value.	0.67
Winter	Mid-Peak	Fixed Value.	1.02
	Off-Peak	Fixed Value.	0.82
	Super-Off-Peak	Fixed Value.	0.65

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

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

*** End of EXHIBIT K ***

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

EXHIBIT L

Procedure for Partial or Full Return of Development Security

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

EXHIBIT L*Procedure for Partial or Full Return of Development Security*1. Introduction.

The procedure set forth in this Exhibit L shall be followed by SCE and Seller for each of Phase 1 and Phase 2 with respect to the return and forfeiture of Development Security.

2. Seller's Request for Development Security Refund.

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

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), 2.04(c) or 5.05; or
- (b) Seller has completed installation of the Solar Generating Units for such Phase pursuant to the Generating Facility and Site Description set forth in Exhibit B for such Phase.

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

If SCE does not dispute Seller's Notice of request for Development Security refund pursuant to Item 2(a) above, SCE shall return the Development Security for such Phase to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days after such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data.

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

Unless SCE provides timely Notice to Seller that additional days are required to substantiate data, SCE shall within thirty (30) days after Seller's Notice of request for Development Security refund pursuant to Item 2(b):

- (a) Complete a site visit to verify that the Generating Facility was developed in accordance with the Generating Facility and Site Description set forth in Exhibit B and to determine the Demonstrated Contract Capacity for such Phase.
- (b) Based upon the information in Item 4(a), calculate the amount of Development Security refund due Seller, and determine the manner of refund, pursuant to Sections 3.04(d) and 3.04(e).
- (c) If the Demonstrated Contract Capacity as determined in Item 4(a) above is greater than or equal to the Contract Capacity for such Phase,

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

then Seller shall qualify to receive a full return of the Development Security for such Phase.

- (d) If the Demonstrated Contract Capacity as determined in Item 4(a) above is less than the Contract Capacity,

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

- (e) Provide Notice to Seller of the amount of Development Security being returned pursuant to Item 4(b), the amount of Development Security forfeited, as applicable, the manner of refund, and the reason(s) that a forfeiture of all or part of the Development Security is appropriate.
- (f) Return any Development Security due Seller if such Development Security were posted in the form of cash.
- (g) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Security is due Seller. If Seller is only entitled to a partial return of the Development Security SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Security forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

*** End of EXHIBIT L ***

EXHIBIT M

Seller's Estimate of Lost Output

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

EXHIBIT M*Seller's Estimate of Lost Output*

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

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

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

1. Log of Lost Output Events.

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

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

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

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

2. Generating Facility Power Curve.

Seller shall create a Generating Facility Power 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 solar insolation;
- (c) One (1) column for the manufacturer's guarantee of the electric energy that can be produced by a single Solar Generating Unit at each increment of solar insolation (as provided in the manufacturer's Output Guaranty/Warranty for a single Solar Generating Unit as adjusted for the dry-bulb ambient air temperature, in degrees Fahrenheit, and installation orientation (i.e., tilt angle);
- (d) One (1) column for a power curve which estimates the electric energy that could be produced by the entire Generating Facility at each solar insolation increment calculated by:
 - (i) *Multiplying* the Solar Generating Unit manufacturer's estimate of the electric energy that will be produced by a single Solar Generating Unit, set forth in Item 2(c);
 - (ii) *Times* the total number of Generating Facility Solar Generating Unit; and then
 - (iii) *Adjusting* the results for the estimated impacts of one (1) Solar Generating Unit on another and for electric losses (including electric losses associated with interconnection wiring, cabling, protective devices, Current Invertors, transformer and measurement losses) within the Generating Facility;

- (e) One (1) column for each Term Year power curve which includes a simple average of all Qualified Amount data points, set forth in Item 3(f), at each solar insolation increment; and
- (f) One (1) row for each watt per square meter.

Seller shall also create a single chart which plots all of power curves set forth in Item 2(d) and Item 2(e) of this Exhibit M on the Generating Facility Power curve worksheet.

3. Solar Insolation Data Collection.

Seller shall record average Settlement Interval solar insolation, in watts per square meter, dry-bulb ambient air temperature in degrees Fahrenheit for each Settlement Interval and Settlement Interval Qualified Amounts in the Lost Output Workbook on individual Term Year worksheets.

Each Term Year worksheet shall be arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the date;
- (c) One (1) column for the beginning time;
- (d) One (1) column for the weekday;
- (e) One (1) column for each recorded solar insolation measurement;
- (f) One (1) column for each recorded dry-bulb ambient air temperature;
- (g) One (1) column for each Qualified Amounts quantity;
- (h) One (1) column for a forecast of Qualified Amounts determined by:
 - (i) *Multiplying* the recorded solar insolation measurement set forth in Item 3(e) of this Exhibit M;
 - (ii) *Times* the appropriate value in the Generating Facility Power Curve, set forth in Item 2(e) of this Exhibit M, for the first Term Year; 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 solar insolation;
- (i) One (1) column for Qualified Amounts;
- (j) One (1) column for a *preliminary* result estimate of the Qualified Amounts that would have been produced by the Generating Facility, but for the Lost Output event:
 - (i) *Multiplying* the solar insolation:
 - (ii) *Times* the appropriate initial power curve as follows:
 - 1. For the first eleven (11) months of the first Term Year the appropriate initial power curve shall be the power 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 power curve shall be the power curve set forth in Item 2(e) of this Exhibit M for the previous Term Year;
- (k) One (1) column for a *final* estimate of the Qualified Amounts that would have been produced by the Generating facility, but for the Lost Output event calculated by:
 - (i) *Multiplying* the solar insolation;

- (ii) *Times* the *final* power curve from Item 2(e) of this Exhibit M for the Term Year being calculated;
 - (l) One (1) column for the *preliminary* estimate of Lost Output calculated by:
 - (i) *Subtracting* the actual Qualified Amount quantities set forth in Item 4(i) of this Exhibit M;
 - (ii) *From* the preliminary estimate of the Qualified Amounts that would have been produced by the Generating Facility, but for the Lost Output event, calculated in Item 4(j); and
 - (m) One (1) column for the *final* estimate of Lost Output calculated by:
 - (i) *Subtracting* the actual Qualified Amount quantities set forth in Item 4(i) of this Exhibit M;
 - (ii) *From* the estimate of Qualified Amounts that would have been produced by the Generating Facility, but for the Lost Output event, calculated in Item 4(k) of this Exhibit M; and
 - (n) One (1) row for each Settlement Interval.
5. Generating Facility Efficiency Calculation.

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

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

- (i) One (1) column for the month number;
 - (ii) One (1) column for the month name;
 - (iii) One (1) column for the year number;
 - (iv) One (1) column for the monthly totals of forecasted Qualified Amount for each Term Year from the Solar Insolation Data Collection worksheet column set forth in Item 3(g) of this Exhibit M; and
 - (v) One (1) row for each month; and
- (c) The third table shall contain monthly Qualified Amount totals and shall consist of:
- (i) One (1) column for the month number;
 - (ii) One (1) column for the month name;
 - (iii) One (1) column for the year number;
 - (iv) One (1) column for a monthly Generating Facility Efficiency result and a Term Year Generating Facility Efficiency 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 Efficiency results.
6. Assignment of Lost Output Estimate to an Independent Consultant.

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

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

EXHIBIT N

Form of Letter of Credit

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

EXHIBIT N
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Ladies and Gentlemen:

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

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

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

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

RAP ID# 5207, FSE Blythe 1, LLC

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

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

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

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

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

ATTACHMENT A

Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

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

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

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

- []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date thereof (“Notice of Non-renewal”), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
- []E. The Beneficiary 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 with respect to Phase [] as a result of Applicant’s failure to achieve Initial Operation of the full Contract Capacity for such Phase by the Startup Deadline or any extended Startup Deadline for such Phase as provided in the Agreement, or the Agreement has terminated due to an Event of Default by Applicant prior to such Startup Deadline.
- []G. The Beneficiary is entitled to retain a portion of the Development Security for such Phase equal to the product of \$10 per kilowatt times the Unincluded Capacity in kilowatts as a result of Applicant demonstrating only a portion of the Contract Capacity for such Phase.

- 2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
- 3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

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

EXHIBIT O

Intentionally deleted

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

EXHIBIT P

CAISO Change Cost Payment Calculation

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

EXHIBIT P

CAISO Change Cost Payment Calculation

1. Introduction.

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

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

Where:

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

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

2. Formula Factors.

The formula factors A_{before} , A_{after} , B_{before} , B_{after} , C_{before} and C_{after} are described as follows:

- (a) Changes in CAISO Allocation of Transmission Congestion and CAISO Transmission Loss Methodologies Impacting Delivered Amounts.

A_{before} = Seller's Adjusted Revenue based on calculating the adjustments to Seller's Actual Revenue, either up or down, under the following circumstances:

- (i) Changes In Methodology For Allocating Transmission Congestion Which Impact Delivered Amounts.

Upon the occurrence of congestion on the transmission system, changes to Seller's actual Delivered Amounts during the Term Year that would result from applying the CAISO's methodology and procedures in effect *immediately prior* to the first Change in CAISO Tariff; and

- (ii) Changes In Loss Methodology Which Impact Delivered Amounts.

Changes in Seller's actual Delivered Amounts during the Term Year that would result from Seller self-providing all CAISO-assessed transmission losses in Seller's Delivered Amounts by applying the GMM using the CAISO GMM procedures in effect as of the Effective Date and the average values of GMM for the twelve (12) calendar months *immediately prior* to the first Change in CAISO Tariff.

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

- (b) Changes in CAISO Tariff Impacting CAISO Charges for Transmission Congestion.

$B_{\text{before}} =$ This value shall be zero (0).

$B_{\text{after}} =$ Actual amount of CAISO charges paid by Seller during the Term Year relating to congestion for delivery of Product from the Generating Facility to the Delivery Point.

- (c) Changes in CAISO Tariff Impacting CAISO Charges for Transmission Losses.

$C_{\text{before}} =$ This value shall be zero (0).

$C_{\text{after}} =$ Actual amount of CAISO charges paid by Seller during the Term Year relating to transmission losses for delivery of Product from the Generating Facility to the Delivery Point.

3. Change Cost Payments.

- (a) Change Cost Payment to Seller.

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

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

Where:

$E =$ CAISO Change Cost as calculated above.

$F =$ CAISO Change Cost Threshold Amount as set forth in Section 1.10.

- (b) Change Cost Payment to SCE.

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

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

Where:

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

E = CAISO Change Cost as calculated above.

F = CAISO Change Cost Threshold Amount as set forth in
Section 1.10.

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

EXHIBIT Q

SCE Penalties and CAISO Sanctions

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

EXHIBIT Q

SCE Penalties and CAISO Sanctions

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

1. Determining Potential Applicability of SCE Penalty.

(a) In the event Seller does not:

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

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

- a. Seller did not comply with its availability forecasting requirements for any hour during the month; and
- b. The sum of Energy Deviations for each of the six Settlement Intervals in the given hour exceeded the Performance Tolerance Band (as defined below);

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

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

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

2. SCE Penalty.

(a) Subject to Sections 2(b) and 2(c) below, the SCE Penalty shall be one hundred dollars per MW (\$100/MW) for each MW of availability deviation, or any

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portion thereof, in every hour for which Seller fails to meet the requirements in Section 1(a).

- (b) The SCE Penalty will be waived the first hour of the first calendar day (and any subsequent hours of such day) in each month in which Seller fails to meet the requirements in Section 1(a).
- (c) The SCE Penalty will be assessed during any hour of any calendar day thereafter in that month in which Seller fails to meet the requirements in Section 1(a).

3. CAISO Sanctions.

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

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 a calendar month 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.

EXHIBIT R
Intentionally deleted

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

Exhibit R

EXHIBIT R-1
Intentionally deleted

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

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

Exhibit R

EXHIBIT S
Actual Availability Report

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

EXHIBIT S
Actual Availability Report

Pursuant to Section 3.21, Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Exhibit S.

1. Availability Workbook.

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

The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all Current Invertors as measured by Seller's SCADA equipment.

2. Log of Availability.

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

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

ATTACHMENT 1
Actual Availability Report
 (Form of Microsoft Excel File Attachment to Email Notice)

[Seller's] Availability Report		QFID — [Seller]																								
		HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24	
Settlement Interval No.	Date	All amounts are in MWh																								
1	mm/dd/yyyy																									
2	mm/dd/yyyy																									
3	mm/dd/yyyy																									
4	mm/dd/yyyy																									
5	mm/dd/yyyy																									
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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

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

EXHIBIT T*Meteorological Station Specifications*

Pursuant to Section 3.06(e), 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 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 protocol and the needs of SCE.

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

1. Equipment Stations.

- (a) The equipment stations shall be comprised of the following:
 - (i) One (1) heated wind sensor;
 - (ii) One (1) air temperature sensor;
 - (iii) One (1) relative humidity sensor;
 - (iv) One (1) barometric pressure sensor (with DCP sensor);
 - (v) One (1) direct normal insolation sensor; and
 - (vi) One (1) total global 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, thirty three (33) feet from 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.

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.

5. Minimum Equipment Requirements.

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

(a) MAWS301 AWS System.

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

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

(ii) ENC542SHIELD Radiation Shield for MAWS301 enclosure

(iii) QMZ101 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) [SCE to add description for relative humidity sensor]
- (vi) [SCE to add description for normal insolation sensor]
- (vii) [SCE to add description for global radiation sensor]

(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

* The Satellite communication requires an unencumbered south-by-south west view of the sky for antenna placement. Weather Station data will be transmitted to SCE consistent with the employed methods at the time of installation.

- (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

*** *End of EXHIBIT T* ***

EXHIBIT U

Seller's Financial Information for Consolidation

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

EXHIBIT U*Seller's Financial Information for Consolidation*

Seller and SCE agree that if SCE provides Notice to Seller pursuant to Section 3.22:

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

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

Seller shall prepare its financial statements to be delivered under the terms of Section 3.22 and this Exhibit U in accordance with accounting principles generally accepted in the United States of America.

2. Promptly upon Notice from SCE, Seller shall allow SCE access to Seller's records and personnel, so that SCE's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for any such audit shall be borne by SCE.
3. SCE shall provide Notice to Seller if, in the sole discretion of SCE, Seller's internal controls of financial reporting (directly or indirectly, alone or in combination with other factors) would be considered material to SCE or its parent company's financial statements, financial condition or internal controls of financial reporting.
4. Within thirty (30) days of Seller's receipt of Notice from SCE, Seller shall remediate any deficiency in Seller's internal controls of financial reporting

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identified by SCE during or as a result of the audits permitted under Section 3.22 and this Exhibit U.

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

6. SCE shall treat Seller's financial statements or other financial information provided under the terms of Section 3.22 and this Exhibit U in strict confidence and, accordingly:
 - (a) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, for making regulatory, tax or other filings required by law in which SCE is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and
 - (b) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, to the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE's or any SCE parent company's financial statements and to those persons or entities who are entitled to receive confidential information as identified in Section 10.10.

*** End of EXHIBIT U ***

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

FSE BLYTHE 1, LLC,
a Delaware limited liability company

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

By: _____

By: _____

Richard L. Gruber
*Vice President,
Project Development*

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

Date: _____

Date: _____