

**POWER PURCHASE AGREEMENT**

**Between**

**SAN DIEGO GAS & ELECTRIC COMPANY**  
(as “Buyer”)

and

**CSOLAR IV WEST, LLC**  
(as “Seller”)

**POWER PURCHASE AGREEMENT**

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## COVER SHEET

This Power Purchase Agreement is made as of the following date: March 8, 2011. This Power Purchase Agreement and all exhibits, schedules, appendices, and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties as well as all written and signed amendments and modifications thereto shall be a part of, and shall be referred to as, the "Agreement." The Parties to this Agreement (hereinafter individually a "Party" and collectively the "Parties") are the following:

**Name:** CSOLAR IV West, LLC ("Seller")

**All Notices:**

Street: 1044 N. 115<sup>th</sup> Street, Suite 400  
City: Omaha, Nebraska Zip: 68154  
Attn: Vice President, Asset Management  
Phone: 402 691 9500  
Facsimile: 402 691 9719  
Federal Tax ID Number: 27-3158382

**Name:** San Diego Gas & Electric Company ("Buyer")

**All Notices:**

Street: 8315 Century Park Court  
City: San Diego, CA Zip: 92123  
Attn: Contract Administration  
Phone: (858) 650-6176  
Facsimile: (858) 650-6190  
Duns: 006911457  
Federal Tax ID Number: 95-1184800

**Invoices:**

San Diego Gas & Electric Company  
8315 Century Park Ct.  
San Diego, California 92123-1593  
Attn: Energy Accounting Manager  
Phone: (858) 650-6177  
Facsimile: (858) 650-6190

**Scheduling:**

San Diego Gas & Electric Company  
8315 Century Park Ct.  
San Diego, California 92123-1593  
Attn: Transaction Scheduling Manager  
Phone: (858) 650-6160  
Facsimile: (858) 650-6191

**Payments:**

San Diego Gas & Electric Company  
PO Box 25110  
Santa Ana, CA 92799-5110  
Attn: Mail Payments  
Phone: (619) 696-4521  
Facsimile: (619) 696-4899

**Wire Transfer:**

To be provided prior to commencement of  
Delivery Term

**Wire Transfer:**

BNK: Union Bank of California  
for: San Diego Gas & Electric Company  
ABA: Routing # 122000496  
ACCT: #4430000352  
Confirmation: SDG&E, Major Markets  
FAX:(213) 244-8316

**Credit and Collections:**

San Diego Gas & Electric Company, Major Markets  
555 W. Fifth Street, ML 10E3  
Los Angeles, CA 90013-1011  
Attn.: Major Markets, Credit and Collections  
Manager  
Fax No.: (213) 244-8316  
Phone: (213) 244-4343

With additional Notices of an Event of Default or  
Potential Event of Default to:

CSOLAR IV West, LLC  
1044 N. 115<sup>th</sup> Street, Suite 400  
Omaha, Nebraska 68154  
Attn: General Counsel  
Phone: 402 691 9500  
Facsimile: 402 691 9723

With additional Notices of an Event of Default or  
Potential Event of Default to:

San Diego Gas & Electric Company  
8330 Century Park Ct.  
San Diego, California 92123  
Attn: General Counsel  
Phone: (858) 650-6141  
Facsimile: (858) 650-6106

## GENERAL TERMS AND CONDITIONS

### ARTICLE ONE: GENERAL DEFINITIONS

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

“Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. 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.

“Agreement” has the meaning set forth in the preamble to the Cover Sheet.

“Annual Contract Quantity” has the meaning set forth in Section 3.1(e).

“Arbitration” has the meaning set forth in Section 12.3.

“As-Available” means a Product for which Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

- (a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller’s negligence or willful misconduct;
- (b) Force Majeure;
- (c) by the Buyer’s failure to perform, including periods of curtailment of delivery of Product from the Project resulting from economic curtailment where Buyer (as the Scheduling Coordinator) submits an economic bid in the applicable CAISO market that results in an otherwise available Product not being scheduled or awarded in such CAISO market ;
- (d) by a Planned Outage of the Project;
- (e) a reduction in output as ordered under Dispatch Down Periods; or
- (f) insufficient solar power for the Project to generate energy as determined by Good Industry Practices utilized by other solar producers in the vicinity of the Project.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Availability Standards” shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Bankrupt” means with respect to any entity, such entity that (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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Bi-Annual Contract Quantity” has the meaning set forth in Section 3.1(e).

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Fronted Expenses” has the meaning set forth in Section 4.4.

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Charges Invoice” has the meaning set forth in Section 3.3(b)(iv).

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO 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.

“California Renewables Portfolio Standard” means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107, as codified in California Public Utilities Code Sections 387, 390.1, and 399.25 and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, as such provisions are amended or supplemented from time to time.

“Capacity Attributes” means any current or (subject to Section 4.4) future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the



capacity of the Project to produce Energy or ancillary services, including but not limited to any accounting construct so that the Contract Capacity of the Project may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Project to generate Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other similar products.

“Capacity Deficiency” means the amount, if any, by which the Contract Capacity that has achieved Commercial Operation by the Guaranteed Commercial Operation Date is less than the Minimum Contract Capacity; provided, however, if the Contract Capacity that has achieved Commercial Operation by the Guaranteed Commercial Operation Date is less than 25% of the Minimum Contract Capacity, then the Capacity Deficiency shall equal the Minimum Contract Capacity. If the Contract Capacity that has achieved Commercial Operation by the Guaranteed Commercial Operation Date equals or exceeds the Minimum Contract Capacity, the Capacity Deficiency shall be zero.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Agreement.

“Claims” has the meaning set forth in Section 11.2(a).

“Commercial Operation” means, with respect to the Project (or a portion thereof as specified under Section 3.9(d)), that (a) the Project (or the specified portion thereof) is operable and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement; (b) Seller shall have satisfied the applicable requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit E with respect to the Project (or the specified portion thereof); (c) Seller shall have delivered true, correct, and complete Commercial Operation Certificates from Seller and, with respect to the Commercial Operation Date only, a Licensed Professional Engineer; (d) with respect to the Commercial Operation Date only, Seller shall have delivered to Buyer the Delivery Term Security as required under Article 8; and (e) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the Project or the applicable portion thereof, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities.

“Commercial Operation Date” means the date on which Seller achieves Commercial Operation for the entire Project, the capacity of which shall be no less than the Minimum Contract Capacity.

“Compliance Expenditure Cap” means, for each Contract Year, an amount equal to Two Thousand Four Hundred Sixty Dollars (\$2,460) per MW of Contract Capacity per Contract Year.

“Conditions Precedent” has the meaning set forth in Section 2.3.

“Construction Period Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(ii) to secure performance of its obligations hereunder.

“Contract Capacity” has the meaning set forth in Section 3.1(f).

“Contract Year” means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the month following the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

“Cover Sheet” means the document that precedes Article 1: General Definitions to this Agreement.

“CP Satisfaction Date” shall mean the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the Party described in Section 2.4).

“CPUC” or “Commission or successor entity” means the California Public Utilities Commission, or successor entity.

“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.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P or Moody’s.

“Daily Delay Damages” means an amount equal to the product of (i) the quotient of (a) the Construction Period Security amount required hereunder, divided by (b) the number of days in the Project Cure Period (without giving effect to any extension of the Project Cure Period pursuant to Section 3.9(c)(i)), multiplied times (ii) the quotient of (a) the Capacity Deficiency divided by (b) the Minimum Contract Capacity.

“Day-Ahead Forecast” has the meaning set forth in Section 3.3(e).

“Debt” means (i) indebtedness for borrowed money (including amounts in respect of accrued interest and prepayment obligations in the way of penalties or make-whole premiums); (ii) obligations for the deferred purchase price of property or services; (iii) obligations evidenced by notes, bonds, debentures, disqualified stock or other similar instruments; (iv) obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by the debtor (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); (v) monetary obligations under (a) a lease of any property (whether real, personal, or mixed) by the debtor as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of the debtor, (b) a so-called synthetic, off-balance sheet or tax retention lease, or (c) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of the debtor but which, upon the insolvency or bankruptcy of the debtor, would be characterized as indebtedness of the debtor (without regard to account treatment); (vi) obligations, contingent or otherwise, under acceptance, letter of guaranty, letter of credit or similar facilities; (vii) obligations in respect of 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; (viii) indebtedness of others referred to in clauses (i) through (vii) above guaranteed by the debtor, or in effect guaranteed by the debtor through an agreement (a) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (b) 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; (c) 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 (d) otherwise to assure a creditor against loss; and (ix) without duplication of the foregoing, all indebtedness referred to in clauses (i) through (viii) above secured by any lien on property (including amounts and contract rights) owned by the debtor.

“Defaulting Party” means the Party that is subject to an Event of Default.

“Default Energy Production” has the meaning set forth in Section 3.1(e).

“Default Rate” means for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable Law.

“Delivered Energy” means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

“Delivery Point” means the point at which Buyer receives Seller’s Product, as set forth in Section 3.1(d).

“Delivery Term” has the meaning set forth in Section 3.1(c).

“Delivery Term Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(iii) to secure performance of its obligations hereunder.

“Development Period Liability Cap” means (i) from the Execution Date until the date on which delivery of the Development Period Security is due as set forth in Section 8.4(a)(i), One Hundred Thousand dollars (\$100,000), and (ii) from the date on which delivery of the Development Period Security is due as set forth in Section 8.4(a)(i) until the CP Satisfaction Date, the full amount of the Development Period Security as set forth in Section 8.4(a)(i).

“Development Period Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.4(a)(i) to secure performance of its obligations hereunder.

“Disclosing Party” has the meaning set forth in Section 13.1(a).

“Disclosure Order” has the meaning set forth in Section 13.1(a).

“Dispatch Down Period” means the period of curtailment of delivery of Product from the Project resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, any system emergency, as defined in the CAISO Tariff (“System Emergency”), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO’s or Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) as a result of scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities or distribution operator’s facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Delivery Point, or (d) curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or

distribution operator; provided, however, Dispatch Down Periods shall not include periods of curtailment of delivery of Product from the Project resulting from economic curtailment where Buyer (as the Scheduling Coordinator) submits an economic bid in the applicable CAISO market that results in an otherwise available Product not being scheduled or awarded in such CAISO market.

“DOE” means the United States Department of Energy.

“DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

“Early Termination Date” has the meaning set forth in Section 5.2.

“Electrical Losses” means all electrical losses associated with the transmission of Product to the Delivery Point, including if applicable, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.11, *et seq.*, as amended or supplemented from time to time.

“Energy” means electric energy measured in MWh and net of Station Service (unless otherwise specified).

“Energy Price” has the meaning set forth in Section 4.1(a).

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller’s.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

“Event of Default” has the meaning set forth in Section 5.1.

“Execution Date” means the date hereof as set forth in the preamble of the Cover Sheet.

“Executive(s)” has the meaning set forth in Section 12.2(a).

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party

seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

(i) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation; or

(iii) except as set forth in subpart (b)(vii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to pay for, use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain Governmental Approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) a lack of wind, sun or other fuel source of an inherently intermittent nature;

(v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

(vi) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project; or

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the type described in subsection (a) above.

“Forced Outage” means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

“GAAP” has the meaning set forth in Section 13.4.

“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 Delivery Term, determined in a commercially reasonable manner and considering the historic and reasonably expected future performance of the Project, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

“GEP Liquidated Damages” has the meaning set forth in Section 3.1(e).

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States 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, and 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 Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and, with respect to the Seller, shall include those siting and operating

permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use, and operation of the Project.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 9.2.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1</sup> and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“Guaranteed Commercial Operation Date” or “GCOD” means December 31, 2015, as may be extended pursuant to Section 3.9(c)(ii) or Section 3.9(c)(iii).

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



“Guaranteed Energy Production” has the meaning set forth in Section 3.1(e).

“Guarantor” means, with respect to Seller, any person that (i) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (iii) (A) has a Credit Rating of A or better from S&P or a Credit Rating of A2 or better from Moody’s, or (B) has a tangible net worth of at least Three Billion dollars (\$3,000,000,000), (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) executes and delivers a Guaranty for the benefit of Buyer substantially in the form attached hereto as Exhibit D.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached hereto as Exhibit D.

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“Initial Delivery Date” means the date on which Commercial Operation occurs with respect to at least 1 MW of Project capacity.

“Initial Negotiation End Date” has the meaning set forth in Section 12.2(a).

“Interest Amount” means, with respect to an Interest Period, the amount of interest derived from: (x) the sum of (a) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (b) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (y) the Interest Rate in effect on the first day of the Interest Period; multiplied by (z) the number of days in that Interest Period; (u) divided by 360.

“Interest Payment Date” means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

“Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (prime, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

“Investment Tax Credit” or “ITC” means the tax credit for property described in Section 48(a)(3)(A)(i) solar energy property of the Internal Revenue Code of 1986, as it may be amended from time to time.

“JAMS” means JAMS, Inc.

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Governmental Approval, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective prior to the end of the Delivery Term; or any binding interpretation of the foregoing by a Governmental Authority.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in substantially the form as contained in Exhibit C to this Agreement.

“LGIA” means the Large Generator Interconnection Agreement to be entered into among Seller, the CAISO and the Participating Transmission Owner, substantially in the form set forth in the CAISO Tariff.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in California, (ii) has training and experience in the power industry specific to the technology of the Project, (iii) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (iv) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (v) is licensed in an appropriate engineering discipline for the required certification being made.

“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 a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner and considering the historic and reasonably expected future performance of the Project. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

“Manufacturing Facility Security” shall mean the Performance Assurance, if any, that Seller is required to maintain during the period and as otherwise specified in Section 2.3(e)(ii).

“Manager” has the meaning set forth in Section 12.2(a).

“Material Governmental Approvals” means all Governmental Approvals necessary to design, develop, construct, install, operate, use, maintain and test the Project and related interconnection facilities, other than any Governmental Approval that satisfies all of the

following: (1) it is not required prior to the start of construction of the Project, (2) it is not subject to the discretionary action of a Governmental Authority, and (3) it otherwise can be obtained in the ordinary course of business without material difficulty or delay.

“Maximum Contract Capacity” has the meaning set forth in Section 3.1(f).

“Milestones” has the meaning set forth in Section 3.9(b)(i).

“Minimum Contract Capacity” has the meaning set forth in Section 3.1(f).

“Monthly Energy Payment” has the meaning set forth in Section 4.1(c).

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“MWh” means megawatt-hour.

“Negative Imbalance Energy” has the meaning set forth in Section 4.2.

“NERC” means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

“NERC Holiday” means any of the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4<sup>th</sup>) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Non-Defaulting Party” has the meaning set forth in Section 5.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Notice to Proceed” or “NTP” means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contactor and satisfaction of all conditions precedent to performance of such contract, by which Seller authorizes such EPC Contactor to commence and complete full performance of the work under the EPC Contract without any delay or waiting periods.

“Option” has the meaning set forth in Article 14.

“Option Closing Date” has the meaning set forth in Article 14.

“Option Purchase Price” has the meaning set forth in Article 14.

“Outage Notification Form” means the completed document from Seller notifying Buyer of an outage of the Project substantially in the form attached hereto as Exhibit G. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

“Panel Manufacturer” has the meaning set forth in Section 2.3(e)(i).

“Panel Manufacturing Facility” has the meaning set forth in Section 2.3(e)(i).

“Participating Intermittent Resource” shall have the meaning set forth in the CAISO Tariff.

“Participating Intermittent Resource Program” or “PIRP” means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is San Diego Gas & Electric Company.

“Party” or “Parties” means the Buyer or Seller individually, or to both collectively.

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Manufacturing Facility Security, Development Period Security, Construction Period Security and Delivery Term Security.

“Performance Measurement Period” has the meaning set forth in Section 3.1(e).

“Planned Outage” means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part as a result of the inspection, maintenance, or repair of equipment that is scheduled in accordance with Section 3.7(a).

“Positive Imbalance Energy” has the meaning set forth in Section 4.2.

“Product” has the meaning set forth in Section 3.1(a).

“Project” means all of the concentrating solar photovoltaic or, if Seller makes the election under Section 2.4(c), solar photovoltaic electric generating units with hourly solar tracking, the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Exhibit A.

“Project Cure Period” has the meaning set forth in Section 3.9(c)(i).

“Qualified Appraiser” means a nationally recognized appraiser or an employee of a nationally recognized appraisal firm who (i) is qualified to appraise independent solar electric generating facilities, (ii) has been engaged in the appraisal or valuation business for not less than ten (10) years, and (iii) is not (and whose firm is not) associated with either Buyer or Seller or any of their Affiliates.

“Qualified Debt” means all Debt of Seller, other than Debt described in clause (viii) of the definition of Debt, that meets all of the following criteria: (i) the net proceeds, properties, or benefits thereof are applied solely to, or used solely for the purposes of paying, reimbursing, or refinancing the costs of, the development, financing, construction, operation, maintenance or improvement of the Project, (ii) such Debt has terms no less favorable to the obligor than terms generally available in the marketplace at the time of the commitment for or incurrence of such Debt, (iii) in the case of Debt described in clauses (ii) and (iv) through (vii) of the definition of Debt, Seller has received reasonably equivalent value related to the development, financing, construction, operation, administration and maintenance of the Project, and (iv) it is not Debt provided by any Affiliate of the Seller (excluding any party that becomes an Affiliate of Seller as a result of foreclosure or sale in lieu of foreclosure on pledged equity interests of Seller) unless consented to in writing by Buyer, such consent not to be unreasonably withheld.

“Quarterly Progress Report” means the report similar in form and content attached hereto as Exhibit F, as may be modified from time to time to meet applicable CPUC requirements.

“Recording” has the meaning set forth in Section 13.6.

“Reductions” has the meaning set forth in Section 3.2(c).

“Referral Date” has the meaning set forth in Section 12.2(a).

“Remedial Action Plan” has the meaning provided in Section 3.9(b)(ii).

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

“Replacement Price” means the price (in dollars per megawatt hour) at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) a replacement for any Product (including its associated Green Attributes) that was not Scheduled and delivered by Seller, plus (i) costs (calculated in dollars per megawatt hour) reasonably incurred by Buyer in purchasing such replacement Product and (ii) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Buyer for such replacement Product, or absent a purchase, the market price at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) for such replacement Product for the hours impacted by such failure to Schedule or deliver such Product as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all CAISO and other charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the Scheduled supply resulting from

Seller's failure to Schedule or deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party. If for any reason a Replacement Price is unavailable when Seller fails to deliver or Schedule Product, then the Replacement Price for the hours when a Replacement Price is unavailable shall be the last available Replacement Price together with any charges and penalties allocated to Buyer during such time.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

"Sales Price" means the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner and to the extent permitted under this Agreement, resells any Product not Scheduled or received by Buyer, deducting from such proceeds any (i) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO to Schedule and deliver the Product into the CAISO System, and (ii) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or absent a sale despite commercially reasonable efforts to resell the Product or where it is commercially reasonable not to attempt to resell the Product, zero, it being acknowledged and agreed that Seller will not have, and that it is commercially reasonable for Seller not to have, systems or processes in place to Schedule or sell the Product. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer's failure to take Product and calculated in dollars per megawatt hour; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. The Sales Price may be less than zero.

"S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Schedule" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and, if applicable, the CAISO the available capacity of the Project and/or the quantity and type of Product, as applicable, to be provided or delivered on any given day or days at a specified Delivery Point, all in accordance with the requirements of this Agreement.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time-to-time.

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices.

“SEC” means the U.S. Securities and Exchange Commission.

“Seller” shall have the meaning set forth on the Cover Sheet.

“Settlement Amount” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Sections 5.2 and 5.3.

“Site” shall mean the location of the Project and related interconnection facilities as described in Exhibit A.

“Station Service” means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project.

“Terminated Transaction” means the termination of this Agreement in accordance with Section 5.2 of this Agreement.

“Termination Payment” has the meaning set forth in Section 5.2.

“TOD Factors” has the meaning set forth in Section 4.1(b).

“TOD Period” has the meaning set forth in Section 4.1(b).

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

“WECC” means the Western Electricity Coordinating Council or successor agency.

“WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

1.2 Interpretation. The following rules of interpretation shall apply:

(a) The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article 1, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) 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.

(f) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(g) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(h) All references to dollars are to U.S. dollars.

## **ARTICLE TWO: EFFECTIVENESS OF AGREEMENT; CONDITIONS PRECEDENT**

2.1 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Execution Date until the CP Satisfaction Date, this Agreement shall be enforceable and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under this Article 2, including, as it relates to Article 2, the rights and obligations under Articles 1, 5, 7, 8, 9, 10, 11, 12, and 13.

2.2 Obligations of the Parties. The Parties shall cooperate with each other to cause the Conditions Precedent to be satisfied as soon as reasonably practical.

(a) Seller’s Obligations. Prior to the CP Satisfaction Date, but subject to its rights to terminate this Agreement as provided herein, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections 2.3(b), 2.3(c), 2.3(d), and 2.3(e), (ii) diligently pursue development of the Project in accordance with Section 3.9, (iii) comply with Section 3.9(b) in achieving the applicable Milestones that have due dates occurring prior to the CP Satisfaction Date, reporting completion of such Milestones, and delivering Remedial Action Plans in respect of missed Milestones as more fully described



therein, (iv) deliver the Quarterly Progress Report in accordance with Section 3.9(a), and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. Upon an Event of Default of Seller prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the Development Period Liability Cap. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

(b) Buyer's Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. Upon an Event of Default of Buyer prior to the CP Satisfaction Date, Seller shall have the right to exercise the remedies set forth in Section 5.2.

2.3 Conditions Precedent. Subject to Section 2.1, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.4) of all of the following conditions precedent ("Conditions Precedent") by the deadline dates set forth below for each Condition Precedent without extension for Force Majeure or any other reason, and if this Agreement is terminated for failure of such Condition(s) Precedent to be satisfied or waived, this Agreement shall be deemed null and void *ab initio*:

(a) CPUC Approval. No later than October 1, 2011, Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking approval thereof. If, within fifteen (15) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

(b) Electrical Interconnection.

(i) No later than June 30, 2013, Seller shall have entered into an LGIA providing for the construction of electrical interconnection facilities necessary to maintain the "Full Capacity Deliverability Status" (as defined in the CAISO Tariff) of the Project with (A) a nonrefundable cost that Seller would be obligated to pay thereunder not exceeding \$250,000 (or such greater amount as Seller may approve, in its sole discretion), (B) provisions for Network Upgrades (as defined in the CAISO Tariff) and other provisions reasonably satisfactory to Seller with respect to the full deliverability of the Product and the mitigation of anticipated congestion and risk of curtailment, and (C) an expected completion date for such electrical interconnection facilities no later than the date that is the same number of days past November 1, 2013 that the Guaranteed Commercial Operation Date has been extended under Sections 3.9(c)(ii)(A)-(C) and/or 3.9(c)(iii) (or a later date acceptable to Seller in its sole discretion).

(ii) No later than October 1, 2011, the CAISO shall have delivered its Phase II Interconnection Study (as defined in the CAISO Tariff) for the Project, and the Network Upgrades associated with the Full Capacity Deliverability Status (as defined in the CAISO Tariff) for the Project for which Buyer will have to reimburse Seller will not exceed Forty-Five Million Dollars (\$45,000,000).

(c) Material Governmental Approvals. No later than December 31, 2012, Seller shall have received the Material Governmental Approvals, which shall be final and non-appealable and shall not include any conditions or requirements that are not acceptable to Seller in its reasonable discretion.

(d) Project Financing.

(i) No later than March 15, 2012, Seller shall have secured, on terms and for an amount acceptable to Seller, approval by DOE of a guaranty or conditional commitment for the financing of the Project.

(ii) No later than June 30, 2013, Seller shall have secured, on terms reasonably acceptable to Seller, irrevocable commitments to Seller from debt and equity providers and other sources of capital to provide funding, working capital, credit, and other financial instruments and support necessary and sufficient in the aggregate to enable Seller to pay all costs and meet all other financial conditions required to complete construction and facilitate operation and maintenance of the Project.

(e) Panel Manufacturing Facility in San Diego County.

(i) No later than March 15, 2012, a solar photovoltaic panel manufacturer acceptable to Seller ("Panel Manufacturer") shall have commenced construction of a new solar photovoltaic panel manufacturing facility (the "Manufacturing Facility") in San Diego County and shall have provided evidence to demonstrate to Buyer's reasonable satisfaction that the Manufacturing Facility shall be in commercial operation by no later than June 15, 2013 producing at least 0.8 MW of concentrating solar photovoltaic panels per month (the "Minimum Production"). Such evidence shall include (A) all material contracts necessary to provide for the construction of, and supply of equipment for, the Manufacturing Facility, (B) all material permits necessary to complete construction of the Manufacturing Facility, and (C) a demonstration that the panel manufacturer has the financial resources to complete the Manufacturing Facility.

(ii) No later than June 15, 2013, either (x) the Manufacturing Facility shall be in commercial operation producing at least 0.8 MW of concentrating solar photovoltaic panels per month (the "Minimum Production"), or (y) Seller shall have delivered to Buyer Performance Assurance in the amount of Five Million dollars (\$5,000,000) in the form of cash or a Letter of Credit or a Guaranty ("Manufacturing Facility Security"). Seller shall maintain such Manufacturing Facility Security in full force and effect until the earlier of July 1, 2014 or the fifteenth (15<sup>th</sup>) day of the month following the month in which the Manufacturing Facility has achieved Minimum Production. If the Manufacturing Facility has not achieved Minimum Production by June 15, 2014, Seller shall forfeit to Buyer liquidated damages in an amount equal

to the Manufacturing Facility Security (it being agreed that such liquidated damages shall be Buyer's sole remedy for a failure of the Manufacturing Facility to so achieve Minimum Production). Buyer may draw or make demand on the Manufacturing Facility Security to pay such amount. If the Manufacturing Facility has achieved Minimum Production on or before June 15, 2014, Buyer shall promptly thereafter return to Seller the Manufacturing Facility Security.

(f) Engineering, Procurement and Construction Contract. No later than the 180<sup>th</sup> day after the CAISO shall have delivered its Phase II Interconnection Study (as defined in the CAISO Tariff) for the Project, Seller shall have entered into a contract or contracts for the engineering, procurement and construction contract for the Project having terms acceptable to Seller.

#### 2.4 Failure to Meet All Conditions Precedent.

##### (a) Beneficiary Party.

(i) Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 2.3(a), 2.3(b)(ii) and 2.3(e), and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, both of the Parties must waive (in their sole discretion) non-satisfaction by the deadline date therefor.

(ii) Seller shall be the sole beneficiary of the Conditions Precedent set forth in Sections 2.3(b)(i), 2.3(c), 2.3(d), and 2.3(f), and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

##### (b) Termination.

(i) If any of the Conditions Precedent is not satisfied on or before the applicable deadline date or waived in writing by the beneficiary Parties thereto within fifteen (15) days after the applicable deadline date, then either of the Parties may terminate this Agreement with no further obligation to either Party (other than as set forth in Sections 2.4(b)(ii) below and any other payment obligations which are accrued and payable at the time of termination) by delivery of Notice to the other Party:

(A) with respect to the Conditions Precedent in Sections 2.3(a), 2.3(b)(i), 2.3(c), 2.3(d) and 2.3(f), (A) no later than fifteen (15) days after the applicable deadline date of such Condition Precedent with respect to termination by a beneficiary Party of such Condition Precedent, and (B) if the Condition Precedent has not been waived by the beneficiary Party, no sooner than sixteen (16) days and no later than thirty (30) days after the applicable deadline date of such Condition Precedent with respect to termination by a Party that is not a beneficiary Party of such Condition Precedent;

(B) with respect to the Condition Precedent in Section 2.3(b)(ii), (A) no later than fifteen (15) days after the applicable deadline date of such Condition Precedent, with respect to termination by the

Buyer, and (B) no later than the 180<sup>th</sup> day after the CAISO shall have delivered its Phase II Interconnection Study (as defined in the CAISO Tariff) for the Project, with respect to termination by the Seller, and

(C) with respect to the Conditions Precedent in Section 2.3(e), (A) no later than fifteen (15) days after the applicable deadline date of such Condition Precedent with respect to termination by Buyer, and (B) no sooner than sixteen (16) days and no later than thirty (30) days after the applicable deadline date of such Condition Precedent with respect to termination by Seller; provided, however, if Buyer has elected to waive the Conditions Precedent in Sections 2.3(e)(i) or (ii) or not to terminate due to the failure of either of such Conditions Precedent to be satisfied, Seller may elect to proceed in accordance with Section 2.4(c).

If a Party has the right to terminate this Agreement pursuant to this Section 2.4, but fails to deliver Notice of termination within its applicable Notice period after each deadline date, then such Party's termination right per this Section 2.4 for such deadline date shall be deemed waived in its entirety. Notwithstanding the foregoing, if the Parties agree prior to the applicable deadline date that a Condition Precedent will not be satisfied by such deadline date and the beneficiary Party of such Condition Precedent wishes to terminate this Agreement due to the failure of such Condition Precedent to be satisfied, such beneficiary Party may terminate this Agreement on that basis on or after the date the Parties agree that such Condition Precedent will not be satisfied.

(ii) Upon a termination of this Agreement by Seller because of the failure of any of the Conditions Precedent set forth in Section 2.3(c), (d), or (f) to be satisfied or waived by the applicable beneficiary Parties thereto, Seller shall forfeit to Buyer an amount equal to the Development Period Security then required to be delivered to Buyer, if any, and shall thereafter have no further liability to Buyer. Buyer may retain the Development Period Security to pay such amount. Upon a termination of this Agreement by Buyer as a result of the failure of any of the Conditions Precedent set forth in Section 2.3 to be satisfied or waived by the applicable beneficiary Parties thereto or by Seller because of the failure of any of the Conditions Precedent set forth in Section 2.3(a), (b), or (e) to be satisfied or waived by the applicable beneficiary Parties thereto, neither Party shall have any further liability to the other Party and Buyer shall return to Seller the Development Period Security then held by Buyer, if any.

(c) Project Conversion. In addition to the right to terminate this Agreement under Section 2.4(b)(i)(C), if any of the Conditions Precedent in Sections 2.3(e) are not satisfied on or before the applicable deadline date, whether or not such Conditions Precedent are waived by Buyer, Seller shall have the right, in lieu of terminating this Agreement, to elect, no later than thirty (30) days after the applicable deadline date of such Condition Precedent, to construct the Project using standard solar photovoltaic technology with hourly solar tracking (instead of concentrating solar photovoltaic technology), in which event (i) the Guaranteed Commercial Operation Date and the other Milestones will be extended as provided in Section 3.9(c)(iii), (ii) the Energy Price will be reduced by \$3.00/MWh, and (iii) clause (B) in the definition of Annual Contract Quantity in Section 3.1(e)(i) will be changed to 0.27. If any of such Conditions Precedent in Sections 2.3(e) is not satisfied on or before the applicable deadline date, but neither Party delivers a termination notice to the other Party in accordance with Section 2.4(b)(i)(C),

Seller shall be deemed to have elected to proceed in accordance with this Section 2.4(c). Notwithstanding the foregoing, if any of such Conditions Precedent in Section 2.3(e) is not satisfied on or before the applicable deadline date, and Buyer delivers a termination notice to Seller in accordance with Section 2.4(b)(i)(C), then this Section 2.4(c) shall not apply.

2.5 Effectiveness of Agreement on and after CP Satisfaction Date. This Agreement shall be in full force and effect, enforceable and binding in all respects as of the CP Satisfaction Date until the conclusion of the Delivery Term or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement relating to the period prior to termination, including payment in full of amounts due for the Product delivered prior to the end of the Delivery Term or earlier termination date, the Settlement Amount, indemnification payments or other damages that have accrued prior to the termination date (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Development Period Security, Construction Period Security, or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

#### 3.1 Transaction.

(a) Product. The “Product” to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is Energy, Capacity Attributes, Green Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project (net of Station Service), in each case on an As-Available basis, in accordance with the terms hereof.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement.

(c) Delivery Term. The Parties agree that the period of Product delivery (the “Delivery Term”) shall commence on the Initial Delivery Date and continue until the end of the twenty-fifth (25th) Contract Year unless terminated earlier as provided by the terms of this Agreement.

(d) Delivery Point. The Delivery Point shall be the point of interconnection of the Project to the CAISO Grid, specifically at the Imperial Valley Substation, or such other point as may be provided in the LGIA.

(e) Annual Contract Quantity and Guaranteed Energy Production.

(i) Defined Terms.

“Annual Contract Quantity” means the quantity of Delivered Energy that Seller expects to be able to deliver to Buyer during each Contract Year of the Delivery Term following the Commercial Operation Date, which quantity is equal to the product of (A) 8760 hours, times (B) 0.29, or 0.27 if Seller has elected, or has deemed to have elected pursuant to Section 2.4(c), to construct the Project using standard solar photovoltaic technology with hourly solar tracking (instead of concentrating solar photovoltaic technology), times (C) the Contract Capacity at the time of the Commercial Operation Date.

“Bi-Annual Contract Quantity” means the quantity of Delivered Energy that Seller expects to be able to deliver to Buyer during each Performance Measurement Period of the Delivery Term following the Commercial Operation Date, which quantity is equal to the product of two times the Annual Contract Quantity.

“Default Energy Production” means, for any Performance Measurement Period, an amount of Energy, as measured in MWh, equal to fifty percent (50%) of the Bi-Annual Contract Quantity for such Performance Measurement Period.

“GEP Liquidated Damages” means the unweighted average price over the applicable Performance Measurement Period of a daily index price (in dollars per MWh) to be agreed by the Parties that reflects the price of “renewable energy credits” within Buyer’s service territory, or, until such an index becomes readily available, the amount (in dollars per MWh) that the CPUC charges load serving entities for failure to achieve their California Renewables Portfolio Standard procurement obligations as set forth in CPUC Decision D.03-06071 (as amended or supplemented from time to time); provided, however, in no event shall the GEP Liquidated Damages be less than \$20/MWh or greater than \$50/MWh.

“Guaranteed Energy Production” means, for any Performance Measurement Period, an amount of Energy, as measured in MWh, equal to seventy percent (70%) of the Bi-Annual Contract Quantity for such Performance Measurement Period.

“Performance Measurement Period” means any twenty-four (24) consecutive calendar month period during the Delivery Term following the Commercial Operation Date, with the first such Performance Measurement Period comprised of full calendar months 1 through 24 following the Commercial Operation Date, the second such Performance Measurement Period comprised of calendar months 2 through 25 following the Commercial Operation Date, and so forth until the end of the Delivery Term.

(ii) Performance Obligation. Following the Commercial Operation Date and throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in any Performance Measurement Period occurring during the Delivery Term. Notwithstanding the excuses to performance set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)), Seller shall be excused from achieving the Guaranteed Energy Production and the Default Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform (including as provided in the definition of the Product type and Buyer’s unexcused failure to Schedule, receive or purchase Product as provided in Section 3.1(h)(ii)), Dispatch Down Periods, and, with respect to the Guaranteed Energy Production only, any

Product deficiency under Section 3.1(h)(i) with respect to which Seller has paid liquidated damages as required under Section 3.1(h)(i), and any Energy shortfall for which Seller has paid liquidated damages as required under Section 3.1(e)(iii). For purposes of determining whether Seller has achieved the Guaranteed Energy Production or Default Energy Production, Seller shall be deemed to have delivered to Buyer Energy equal to the sum of (A) Delivered Energy during such Performance Measurement Period, plus (B) the amount of Energy that Seller could reasonably have delivered to Buyer during such Performance Measurement Period but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer's failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production only, in addition to the amounts of Energy deemed delivered pursuant to the preceding sentence, Seller shall also be deemed to have delivered to Buyer Energy equal to the sum of (C) the amount of Energy comprising any Product deficiency under Section 3.1(h)(i) during such Performance Measurement Period with respect to which Seller has paid liquidated damages as required under Section 3.1(h)(i), plus (D) the amount of Energy during such Performance Measurement Period with respect to which Seller has paid liquidated damages as required under Section 3.1(e)(iii).

(iii) Liquidated Damages. If Seller fails to achieve the Guaranteed Energy Production but achieves the Default Energy Production in any Performance Measurement Period, Seller shall cure such failure by paying to Buyer liquidated damages in the amount of the product of the GEP Liquidated Damages times the amount of Energy that Seller is deficient in achieving the Guaranteed Energy Production. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Each Party agrees and acknowledges that (x) the actual damages that Buyer would incur due to Seller's failure to achieve the Guaranteed Energy Production would be difficult or impossible to predict with certainty, (y) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (z) the liquidated damages set forth in this section are the exclusive remedy for Seller's failure to achieve the Guaranteed Energy Production; provided, however, that such liquidated damages shall not limit Buyer's remedies in respect of any other Event of Default, including the failure by Seller to pay such liquidated damages or the failure by Seller to achieve the Default Energy Production in any Performance Measurement Period.

(f) Contract Capacity. The "Contract Capacity" is the full generation capacity of the Project net of all Station Service which shall be no less than 96 MWac (the "Minimum Contract Capacity") and no greater than 150 MWac (the "Maximum Contract Capacity"). Seller shall declare the Contract Capacity in the Commercial Operation Certificate delivered as of the Commercial Operation Date. Throughout the Delivery Term, Seller shall sell and Schedule all Product associated with the Contract Capacity of the Project, net of Station Service, solely to Buyer, except in the case of an Event of Default of Buyer.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Other than repair, replacement, and maintenance in accordance with Good Industry Practices, Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project without Buyer's prior written consent. The Project is further described in Exhibit A. Seller may update Exhibit A from time to time prior to the CP Satisfaction Date to reflect changes in real estate rights,

permit requirements and other matters as Seller completes the development of and the securing of land rights, Governmental Approvals, and other assets necessary to develop and construct the Project.

(h) Performance Excuses.

(i) Seller Excuses. The performance of Seller to Schedule, deliver, and sell the Product as and to the extent required hereunder shall be excused only for the reasons set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)). If Seller fails to Schedule, deliver, or sell all or part of the Product as and to the extent required hereunder, and such failure is not excused as described above, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (A) the product of the Energy Price times the weighted average TOD Factor for such period of Product deficiency times the Product deficiency, from (B) the product of the Replacement Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. Unless and until Seller becomes the Scheduling Coordinator for the Project, Seller's obligations to Schedule the Product are set forth in Sections 3.3, 3.6(c), and 3.7.

(ii) Buyer Excuses. The performance of Buyer to Schedule, receive, and pay for the Product as and to the extent required hereunder shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods, to the extent that Buyer's performance is affected thereby. If Buyer fails to Schedule, receive, or purchase all or part of the Product as and to the extent required hereunder and such failure is not excused as described above, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such failure to Schedule, receive, or purchase Product equal to the sum of (1) the positive difference, if any, obtained by subtracting (Y) the product of the Sales Price received by Seller times the amount of the Product that Buyer failed to Schedule, receive, or purchase from (Z) the product of the Energy Price times the weighted average TOD Factor for such period of failure to Schedule, receive, or purchase times the amount of the Product that Buyer failed to Schedule, receive, or purchase, plus (2) all CAISO costs (including penalties, Negative Imbalance Energy costs and other charges) assessed against Seller related to such failure to Schedule, receive or purchase all or part of the Product. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. For the avoidance of doubt, Buyer shall not be excused from its obligation to pay for the Product that Seller could reasonably have delivered to Buyer but for periods of curtailment of delivery of Product from the Project resulting from economic curtailment where Buyer (as the Scheduling Coordinator) submits an economic bid in the applicable CAISO market that results in an otherwise available Product not being scheduled or awarded in such CAISO market.

(i) 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.



(j) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to use in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller understands that the CPUC is currently in the process of developing requirements for Resource Adequacy and these requirements and the implementation thereof have not been finalized. Seller agrees that it shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer and to cause the Project to be subject to the terms of the Availability Standards; provided, however, to the extent a change in Law occurs after the Execution Date that makes Seller's compliance with its obligations under this sentence more costly or burdensome, then subject to Section 4.4 Seller shall not be in breach of such obligations if Seller has used commercially reasonable efforts to comply with such change in Law as it pertains to such obligations. Notwithstanding the foregoing, Seller makes no representation or warranty with respect to whether and to what extent the Contract Capacity is "qualifying capacity" for Resource Adequacy purposes.

(k) Climate Registry. Seller shall register the Project with the Climate Registry as may be required by the CPUC pursuant to Decision 06-02-032 and any subsequent order, but in any event, no later than the Initial Delivery Date; provided, however, to the extent a change in Law occurs after the Execution Date that makes Seller's compliance with its obligations under this sentence more costly or burdensome, then subject to Section 4.4 Seller shall not be in breach of such obligations if Seller has used commercially reasonable efforts to comply with such change in Law as it pertains to such obligations. .

(l) WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement. In particular, prior to the Initial Delivery Date, Seller shall register the Project in WREGIS, and take all other actions necessary to ensure that the Energy or Green Attributes produced from the Project are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer; provided, however, to the extent a change in Law occurs after the Execution Date that makes Seller's compliance with its obligations under this sentence more costly or burdensome, then subject to Section 4.4 Seller shall not be in breach of such obligations if Seller has used commercially reasonable efforts to comply with such change in Law as it pertains to such obligations.

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

### 3.2 Transmission

(a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange, be responsible for, and bear all risks and costs associated with, delivery of the Product to the Delivery Point. Seller shall fulfill all contractual, metering and applicable

interconnection requirements necessary to deliver Product to the Delivery Point, including those set forth in Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement (as defined in the CAISO Tariff) and Meter Service Agreement (as defined in the CAISO Tariff) so as to be able to deliver Energy to the CAISO Grid. Seller shall arrange for any interconnection agreement with the CAISO and such interconnection agreement is separate and not a part of this Agreement.

(b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service for delivery of the Product from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods.

(c) Congestion Charges. Seller shall be responsible for all costs of congestion for transmission of the Product up to the Delivery Point. Buyer shall be responsible for all costs of congestion for transmission of the Product at and from the Delivery Point. To the extent that Seller is reimbursed for or receives any refunds or credits from the CAISO for congestion charges or losses in respect of transmission of the Product at and from the Delivery Point, whether due to differences between the locational marginal pricing at the Delivery Point and Buyer's load aggregation point or any other point downstream of the Delivery Point, congestion revenue rights associated with any transmission path downstream of the Delivery Point, or any other hedging instruments associated with the transmission of the Product from the Delivery Point (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions. It is agreed that "Reductions" do not include repayments or reimbursements to Seller for the cost of Network Upgrades or any congestion revenue rights that may be due to Seller or that Seller may acquire with respect to transmission from or congestion between the Project and the Delivery Point.

### 3.3 Scheduling.

(a) PIRP Requirements. As soon as reasonably possible after the Initial Energy Delivery Date, Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in PIRP. Seller and Buyer shall comply with PIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the PIRP, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource prior to the Initial Energy Delivery Date. In the event that PIRP or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the parties as of the date of this Agreement.

(b) Scheduling Coordinator.

(i) Buyer as Scheduling Coordinator for the Project. Upon initial synchronization of the Project to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the initial synchronization of the Project to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Project effective as of initial synchronization of the Project to the CAISO Grid. On and after initial synchronization of the Project to the CAISO Grid, until this Agreement has been terminated, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless Buyer fails to perform its duties as Scheduling Coordinator and such failure has matured into an Event of Default or as otherwise agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. Whenever PIRP is available, Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy in accordance with PIRP, and whenever PIRP is not available, Buyer (as Seller's SC) shall submit Schedules to the CAISO (economic bids, self schedules, or otherwise) consistent with Buyers' best estimate of the Product that will be available based on the information reasonably available to Buyer including Buyer's forecast.

(ii) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 3.7 and this Section 3.2, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties, Negative Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Positive Imbalance Energy revenues, and other payments) as the Scheduling Coordinator for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. Seller shall be responsible for all CAISO charges or penalties net of credits and payments, in each case, resulting from the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages or other unavailability of Project capacity in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7) or any other failure by Seller to abide by the CAISO Tariff (except as the result of Buyer's

failure to perform its duties as Seller's Scheduling Coordinator),, including without limitation uninstructed deviation penalties resulting therefrom. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Project or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility to the extent due to the actions or inactions of Seller.

(iv) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties with respect to the Delivery Term for which Seller is responsible under this Agreement ("CAISO Charges Invoice"). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Buyer will review, validate, and dispute any charges that are the responsibility of Seller in a timely manner and consistent with its existing settlement processes for charges that are Buyer's responsibility. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) Dispute Costs. Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Project. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Project and which Seller has required Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Project as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(c) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each

calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year.

(d) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Delivered Energy, by hour, for the following month ("Monthly Delivery Forecast").

(e) Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Project's available capacity (or if PIRP is not available for any reason, the expected Delivered Energy) for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Project's available capacity (or if PIRP is not available for any reason, the expected Delivered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Force Majeure event (or the restoration of capacity after a Forced Outage or Force Majeure event) or Schedule change imposed by Buyer, the Participating Transmission Owner, or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate of the Energy that the Project will produce based on information reasonably available to Buyer, and Seller shall be liable for any deviations between Scheduled Energy (based on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate of Energy production, as applicable) and Delivered Energy.

(f) Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Day-Ahead Forecast on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 3.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.

3.4 Dispatch Down/Curtailment. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, ownership and/or operation of the Project).

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Industry Practices.

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, “Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities,” and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider. Seller shall enter into and comply with the WECC Reliability Management System (Generator) Agreement, or successor agreement, as of the Commercial Operation Date and throughout the Delivery Term.

### 3.6 Metering.

(a) CAISO Revenue Meter. All output from the Project per the terms of this Agreement must be measured by a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. Such CAISO revenue meter may be located at the Delivery Point or at or near the Project, as approved by CAISO. All Product purchased under this Agreement must be measured by the Project’s CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

(i) Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Industry Practice and the CAISO Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer’s expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

(ii) Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement (as defined in the CAISO Tariff), deliveries shall

be measured by reference to Seller's check-meters, if any are installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

(iii) Delivered MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the Delivered Energy is increased or decreased, the revised Delivered Energy shall be used for purposes of calculating payments. If any of such amounts for any period have already been calculated using the previous amount of Delivered Energy, they shall be recalculated using the revised amount of Delivered Energy. If the recalculation changes the amount payable for the period in question, revised payments shall be made by Buyer or Seller, as applicable, in accordance with Section 6.2.

(b) Real Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Project in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

(c) Meteorological Station. Seller, at its own expense, shall install and maintain such stand-alone meteorological stations at the Project as may be required under PIRP and the CAISO Tariff to monitor and report weather data to both the CAISO and Buyer's weather station data collection system. Each station shall be equipped with instruments and equipment that meet the specifications of PIRP and shall measure, collect, record, format, and communicate the data required under PIRP. Seller shall submit to Buyer for review and approval, which shall not be unreasonably withheld, its technical specifications for the meteorological station along with a site plan showing the location of the station within the Project. Seller shall correct any problems with such equipment as soon as practicable.

### 3.7 Outage Notification.

(a) Planned Outages. Seller shall schedule Planned Outages for the Project in accordance with Good Industry Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. The Parties acknowledge that in all circumstances, Good Industry Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October 1<sup>st</sup> of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use commercially reasonable efforts in accordance with Good Industry Practices to

accommodate Buyer's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed Outage Notification Form to Buyer no later than fourteen (14) days prior to each Planned Outage and all appropriate outage information or requests to the CAISO in accordance with the CAISO Tariff. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Industry Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall use its best efforts in accordance with Good Industry Practices not to schedule Planned Outages during the months of July, August, September and October. At Buyer's request, Seller shall use commercially reasonable efforts to reschedule Planned Outage so that it may deliver Product during CAISO declared or threatened emergency periods. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.

(b) Forced Outages. So long as Buyer is the Scheduling Coordinator for the Project, within one-half of the notification time for Forced Outages prescribed under the CAISO Tariff, and if Seller is the Scheduling Coordinator for the Project, within the full notification time for Forced Outages prescribed under the CAISO Tariff, Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form. In addition, Seller shall submit outage information to the CAISO in accordance with the CAISO Tariff and Section 3.3(b)(ii) above. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.

(c) Coordination with CAISO. Seller shall be responsible in accordance with Section 3.3(b)(ii) for all outage coordination communications with the CAISO. Buyer shall cooperate with Seller in arranging and coordinating all Project outages with the CAISO.

### 3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to Buyer within one day of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement.

### 3.9 New Generation Facility.

(a) Project Development. Seller, at no cost to Buyer, shall:

(i) Design and construct the Project.



(ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the electrical interconnection facilities to Schedule and deliver the Product from the Project under “Full Capacity Deliverability Status” (as defined in the CAISO Tariff).

(iii) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis required under the California Environmental Quality Act for the Project and related interconnection facilities.

(v) At Buyer’s request, provide to Buyer Seller’s electrical specifications and design drawings pertaining to the Project.

(vi) Within fifteen (15) days after the close of each calendar quarter following the Execution Date until the Commercial Operation Date, provide to Buyer a Quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The Quarterly Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(vii) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project’s construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(b) Construction Milestones.

(i) The Parties agree time is of the essence in regards to this Agreement. As such, the Parties also agree certain milestones for the construction of the Project as set forth in the Milestone schedule attached hereto as Exhibit B (“Milestones”) must be achieved in a timely fashion, but the remedies for failure to achieve one or more of the Milestones shall be limited to the remedies specifically set forth in this Agreement.

(ii) Within seven (7) days after completion of each Milestone, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone. If Seller misses the deadline date for three (3) or more Milestones or misses the deadline date for any one Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”) that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones no later than the end of the Project Cure Period; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

(c) Daily Delay Damages.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date for up to a total of one hundred eighty (180) days (“Project Cure Period”); provided, however, that Seller may, at its option, extend the Project Cure Period by up to an additional one hundred eighty (180) days by notifying Buyer of its election to do so no later than one hundred fifty (150) days after the Guaranteed Commercial Operation Date and increasing the Construction Period Security by an amount equal to the product of (A) the Construction Period Security specified in Section 8.4(a)(ii) times (B) the quotient of the number of days by which Seller wishes to extend the Project Cure Period divided by one hundred eighty (180). In addition, Seller shall submit a Remedial Action Plan within ten (10) days after the Guaranteed Commercial Operation Date if the Project has not then achieved the Commercial Operation Date. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the Daily Delay Damages set forth in this section are the exclusive remedy for Seller’s delay in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date but shall not otherwise act to limit any of Buyer’s rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve the Commercial Operation Date altogether. For the avoidance of doubt, as used herein, the Guaranteed Commercial Operation Date shall mean the Guaranteed Commercial Operation Date as extended pursuant to Sections 3.9(c)(ii) and 3.9(c)(iii).

(ii) Extensions. The Guaranteed Commercial Operation Date and the deadline dates for the Milestones affected by the events described below shall be extended on a day for day basis without imposition of any Daily Delay Damages to the extent Seller is actually and demonstrably delayed in its critical path to achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date:

(A) for up to three hundred sixty-five (365) days in the aggregate if such delay is a result of Force Majeure;

(B) for up to three hundred sixty-five (365) days in the aggregate if such delay is a result of the failure of the Condition Precedent set forth in Section 2.3(c) (entitled “Material Governmental Approvals”) to be satisfied by December 31, 2011, but only to the extent such failure is not the result of the fault or negligence of the Seller;

(C) for up to three hundred sixty-five (365) days in the aggregate if such delay is a result of the failure of the Condition Precedent

set forth in Section 2.3(b) (entitled “Electrical Interconnection”) to be satisfied by June 30, 2012, but only to the extent such failure is not the result of the fault or negligence of the Seller; and

(D) if such delay is a result of the failure of the CAISO or the Participating Transmission Owner to achieve the in-service interconnection date for the Project’s interconnection facilities by the date that is the same number of days past November 1, 2013 that the Guaranteed Commercial Operation Date has been extended under Sections 3.9(c)(ii)(A)-(C) and 3.9(c)(iii), but only to the extent such failure is not the result of the fault or negligence of the Seller. Each of Seller and Buyer acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of any other agreement between Seller and Buyer, including any electric interconnection agreement. Except as may be set forth in such electrical interconnection agreement, Buyer has made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied, with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electric interconnection for the Project. Seller’s sole and exclusive remedy against Buyer under this Agreement for any delay by Buyer in completing any interconnection facilities is an extension of the Guaranteed Commercial Operation Date in accordance with this Section 3.9(c)(ii).

Notwithstanding the foregoing, the aggregate extension of the Guaranteed Commercial Operation Date permitted for all reasons under Sections 3.9(c)(ii)(A)-(C) shall be no greater than five hundred forty-eight (548) days. Any delay due to any of the causes described in Sections 3.9(c)(ii)(A)-(C) above in excess of the time periods specified in the applicable clause or in excess of five hundred forty-eight (548) days in the aggregate shall be subject to Daily Delay Damages pursuant to Section 3.9(c)(i).

(iii) Project Conversion. If Seller has elected, or has deemed to have elected, pursuant to Section 2.4(c) to construct the Project using standard solar photovoltaic technology with hourly solar tracking (instead of concentrating solar photovoltaic technology, the Guaranteed Commercial Operation Date shall be extended to June 1, 2016, and the other Milestones shall each be extended by seventeen (17) months, which revised Milestones shall be subject to further extension as provided in Section 3.9(c)(ii).

(d) Partial Commercial Operation. Seller may cause portions of the Project no less than 1 MW each to achieve Commercial Operation at different times by satisfying the definition of Commercial Operation with respect to each such portion of the Project, provided that the first portion of the Project to achieve Commercial Operation shall be no less than the Project capacity specified in the definition of Initial Delivery Date. In the event that the installed capacity of the portion of the Project that has achieved Commercial Operation as of the Guaranteed Commercial Operation Date is equal to or greater than the Minimum Contract Capacity, then Seller shall either (i) cause such date to be the Commercial Operation Date of the

Project by delivering a final Commercial Operation Certificate and the Delivery Term Security (as adjusted pursuant to Section 8.4(a)(iii)), or (ii) continue to commission additional photovoltaic panels on the Site until the earlier of (A) the date on which Seller determines that it has commissioned all of the photovoltaic panels planned for the Project, (B) the date on which the capacity of the Project that has achieved Commercial Operation is equal to the Maximum Contract Capacity, or (C) the date on which the Project Cure Period ends, on which date, in all cases, Seller shall deliver a final Commercial Operation Certificate and the Delivery Term Security (as it may be adjusted pursuant to Section 8.4(a)(iii)) thereby causing such date to be the Commercial Operation Date for the Project. For the avoidance of doubt, if the installed capacity of the portion of the Project that has achieved Commercial Operation as of the Guaranteed Commercial Operation Date is less than the Minimum Contract Capacity, Seller shall continue to be bound by its obligations under Sections 3.9(b), 3.9(c), and 5.1(b)(ii).

3.10 Operating Procedures. No later than forty-five (45) days before the Initial Delivery Date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Planned Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) Scheduling procedures; and (7) invoicing and payment procedures; provided, that the failure to agree on these operating procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 12.

**ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS**

4.1 Energy Payment.

(a) Energy Price. The price for each MWh of Delivered Energy during the Delivery Term shall be \$125.85/MWh subject to adjustment as provided in Section 2.4(c) (“Energy Price”).

(b) TOD Factors and TOD Periods. In accordance with all other terms of this Article 4, the Energy Price shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified Time of Delivery Periods listed in the first column (“TOD Periods”) in which Energy is delivered:

	<b>Summer July 1 – October 31</b>	<b>Winter November 1 – June 30</b>
<b>On-Peak</b>	<b>Weekdays 11am – 7pm TOD Factor = 1.6411</b>	<b>Weekdays 1pm - 9pm TOD Factor = 1.1916</b>
<b>Semi-Peak</b>	<b>Weekdays 6am – 11am; Weekdays 7pm - 10pm TOD Factor = 1.0400</b>	<b>Weekdays 6am – 1pm; Weekdays 9pm – 10pm TOD Factor = 1.0790</b>
<b>Off-Peak*</b>	<b>All other hours TOD Factor = 0.8833</b>	<b>All other hours TOD Factor = 0.7928</b>
*All hours during NERC holidays are off-peak.		

(c) Monthly Energy Payment. For each month, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the TOD Factor for the applicable TOD Period times the Delivered Energy in each hour (“Monthly Energy Payment”).

$$\text{Monthly Energy Payment} = \sum \text{Energy Price} \times \text{TOD Factor} \times \text{Delivered Energy}$$

4.2 Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered “Positive Imbalance Energy;” when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the “Negative Imbalance Energy.” Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals regardless as to whether it was sold into the CAISO.

4.3 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades funded by Seller.

4.4 Expenditures Exceeding Compliance Expenditure Cap. For purposes of Sections 3.1(j), 3.1(k), 3.1(l), and 10.2., the term “commercially reasonable efforts” shall not require Seller to incur additional out-of-pocket expenditures in the aggregate in excess of the Compliance Expenditure Cap in any individual Contract Year in complying with the changes in Law described in such sections unless Buyer has agreed in writing, on terms and conditions reasonably acceptable to Seller (which may include the payment of interest to Seller), to reimburse Seller for or to pay directly such excess expenditures (“Buyer Fronted Expenses”). To the extent Seller has incurred expenses that are subject to the Compliance Expenditure Cap in each subsequent Contract Year in a net amount (after netting out Buyer Fronted Expenses in such subsequent Contract Year) that is less than the Compliance Expenditure Cap, Seller shall reimburse Buyer for all unreimbursed Buyer Fronted Expenses with interest at the Interest Rate up to an amount equal to the lesser of (i) the remaining amount of unreimbursed Buyer Fronted Expenses or (ii) the Compliance Expenditure Cap. Such reimbursement by Seller to Buyer shall be considered an expense that is subject to the Compliance Expenditure Cap for each such subsequent Contract Year. Seller shall have no continuing obligation to reimburse Buyer for any such Buyer Fronted Expenses that have not been fully reimbursed by the end of the final Contract Year; provided, however, the foregoing shall not limit Buyer’s rights to reimbursement of such Buyer Fronted Expenses with interest after an early termination of this Agreement upon an Event of Default where Seller is the Defaulting Party or Force Majeure event where Seller is the claiming Party. The Parties shall cooperate throughout each Contract Year to promptly address, account for, and inform each other of any expenses that are subject to the Compliance

Expenditure Cap. Within thirty (30) days after the end of each Contract Year, Seller shall prepare an invoice detailing the expenses that are subject to the Compliance Expenditure Cap, the Buyer Fronted Expenses and interest thereon, and any payments or reimbursements owed to either Party in respect thereof and send Notice of the same to Buyer. Within thirty (30) days after such Notice, each Party shall pay or reimburse the other Party to the extent of any amounts owed.

## **ARTICLE FIVE: EVENTS OF DEFAULT; FORCE MAJEURE**

5.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) 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, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations (A) to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.1(h), (B) to deliver the Guaranteed Energy Production in any Measurement Period, the exclusive remedy for which is set forth in Section 3.1(e)(iii), or (C) to meet any Milestone other than the Guaranteed Commercial Operation Date, the exclusive remedy for which is set forth in Section 3.9(b)(ii)) and such failure is not remedied within thirty (30) days after Notice thereof; provided, however, that, if such failure cannot reasonably be remedied within such thirty (30) day period, but such Party is diligently pursuing such remedy, the foregoing period shall be extended for such time as is reasonably necessary to effect such remedy, up to a total cure period of ninety (90) days after the original Notice of failure to perform;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 13.2; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) the failure by Seller to achieve the Commercial Operation Date with respect to the Minimum Contract Capacity no later than the end of the Project Cure Period;

(iii) the failure by Seller to achieve the Default Energy Production requirement during any Performance Measurement Period as set forth in Section 3.1(e) of this Agreement;

(iii) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date within the Project Cure Period, if such failure is not remedied within ten (10) days after Notice;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.3 or 8.4 of this Agreement;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder (x) in the case of clauses (B) through (F) below, within five (5) Business Days and (y) in the case of clause (A) below, within seven (7) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or

(F) such Letter of Credit fails or ceases to be in full force and effect at any time.

5.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, to collect liquidated damages calculated in accordance with Section 5.3 below (“Termination Payment”), and, at Buyer’s election, to exercise the Option under Article 14; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, however, that if Buyer elects to exercise the Option as provided in clause (a), then, notwithstanding any prior termination of this Agreement, Seller (i) shall not be required to pay any Termination Payment until the Option Closing Date, at which time any Termination Payment then owing shall be netted against the Option Purchase Price payable by Buyer, and (ii) shall be allowed to cure any Event of Default that led to such termination at any time until all of the conditions precedent to the Option closing in Sections 14.10 and 14.11 have been satisfied or waived, in which event both Buyer’s termination of this Agreement and its exercise of the



Option shall be automatically rescinded, and this Agreement shall continue in full force and effect.

5.3 Termination Payment. The Termination Payment for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes, Green Attributes, and ITC benefits (that Seller has not been able to mitigate after use of reasonable efforts) shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction (except where Seller is the Defaulting Party, Buyer may also elect, in its discretion, to exercise the Option under Article 14, subject to Seller's right to cure the Event(s) of Default that led to such termination as provided in Section 5.2), but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 12.

5.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 5

shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

5.8 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure to the other Party as detailed below, then, the Party impacted by Force Majeure shall be excused from the performance of its obligations to the extent impacted. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Seller shall not substitute Product from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure, and a Party shall only be excused from performance of its obligations as a result of a Force Majeure if and to the extent the Force Majeure prevents such Party from performing such obligations. A Party affected by a Force Majeure shall use diligent efforts to correct or remedy the effect of such Force Majeure as soon as reasonably possible. Buyer shall not be required to make any payments for any Product that Seller fails to Schedule, deliver or provide as a result of Force Majeure during the term of a Force Majeure. This Agreement may be terminated by the non-claiming Party with no further obligation to the Party impacted by Force Majeure if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure event is not resolved within twelve (12) months after the commencement of such Force Majeure event.

## **ARTICLE SIX: PAYMENT**

6.1 Billing and Payment. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from CAISO, necessary to verify the invoice; and (c) an invoice, in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such

interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

6.3 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Section 3.1(h), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO 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. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS FOR DAMAGES SUFFERED BY SUCH THIRD PARTY (BUT EXPRESSLY

EXCLUDING CLAIMS FROM BUYER'S CUSTOMERS IN RESPECT OF BUYER'S PROVISION OF OR FAILURE TO PROVIDE ELECTRICAL SERVICES TO SUCH CUSTOMERS) OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, 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. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal 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 Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.

8.2 Seller Financial Information. Seller shall provide the following financial information:

(a) If requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited (if available, otherwise unaudited certified by an officer of Seller) consolidated financial statements for such fiscal 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 Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

(b) If a Guaranty is provided and if requested by Buyer, Seller shall deliver (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of Guarantor's annual report containing audited consolidated financial statements for such fiscal 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 Guarantor's quarterly report containing unaudited consolidated financial statements for such fiscal quarter certified by an officer of Guarantor. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Guarantor diligently pursues the preparation, certification and delivery of the statements. Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all Performance Assurance, all cash collateral and cash equivalent collateral constituting Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof, Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### 8.4 Performance Assurance.

(a) Development Period Security, Construction Period Security, Delivery Term Security. To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:

(i) Development Period Security in the amount of One Million dollars (\$1,000,000) in the form of cash or a Letter of Credit or a Guaranty from the date that is fifteen (15) days after the deadline date for the Condition Precedent set forth in Section 2.3(d)(i) until the return date specified in Section 8.4(b)(i) below;

(ii) Construction Period Security in the amount of Two Million Eight Hundred Thousand Dollars (\$2,800,000) in the form of cash or a Letter of Credit or a Guaranty from the CP Satisfaction Date until the return date specified in Section 8.4(b)(ii) below; and

(iii) Delivery Term Security in the amount equal to the product of (A) the Annual Contract Quantity as of the Commercial Operation Date based on the Contract Capacity of the Project as certified by Seller in the final Commercial Operation Certificate, multiplied by (B) \$30/MWh, in the form of cash or a Letter of Credit or a Guaranty from the Commercial Operation Date until the return date specified in Section 8.4(b)(iii) below.

Except as set forth in the definition of Development Period Liability Cap, Section 2.2 as it pertains to the Development Period Security, and Section 2.3(e)(ii) as it pertains to the Manufacturing Facility Security, any such Performance Assurance shall not be deemed a limitation of damages.

(b) Return of Performance Assurance.

(i) Buyer shall promptly return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, and (B) termination of the Agreement by Buyer or Seller where the Development Period Security is to be returned to Seller as described in Section 2.4(b)(ii).

(ii) Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Term Security, and (B) the date that all payment obligations of the Seller arising under this Agreement, including compensation for penalties, indemnification payments, or other damages (in each case, to the extent accrued on or before the termination date), and any Termination Payment are paid in full (whether directly or indirectly such as through set-off or netting) after an Early Termination Date.

(iii) Buyer shall promptly return to Seller the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, indemnification payments, or other damages (in each case, to the extent accrued on or before the termination date), and any Termination Payment are paid in full (whether directly or indirectly such as through set-off or netting).

8.5 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as Development Period Security, Construction Period Security or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for such security in the form of cash by wire transfer to the bank account specified under “Wire Transfer” in the Cover Sheet.

8.6 Letter of Credit.

(a) If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable

costs, expenses, and attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

(b) If Seller fails to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than forty-five (45) days prior to the expiration of the outstanding Letter of Credit, Buyer shall have the right to draw the entire amount of such Letter of Credit. Cash proceeds (in at least the amount of the then required Performance Assurance) received by Buyer as a result of such drawing shall be considered replacement Performance Assurance and shall be deemed to cure any Event of Default or potential Event of Default under Section 5.1(b)(vi).

## **ARTICLE NINE: GOVERNMENTAL CHARGES**

9.1 Cooperation. 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.

9.2 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 Product or the transaction under this Agreement arising prior to the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement at and from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

## **ARTICLE TEN: REPRESENTATIONS AND WARRANTIES; COVENANTS**

10.1 General Representations and Warranties. On the Execution Date and the CP Satisfaction Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(b) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except for as of the Execution Date (i) CPUC Approval in the case of Buyer, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;

(c) the execution, delivery and performance of this Agreement is 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 applicable Law;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) 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;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

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

10.2 Seller Representations and Warranties. Seller's obligations under this Section 10.2 are subject to Section 4.4.

(a) 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.

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a



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

### 10.3 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law; and

(iv) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

### (b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

(ii) Seller covenants throughout the Delivery Term that it shall maintain market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement in all material respects.

(iii) If at any time during the Delivery Term, Seller’s representations and warranties set forth in Section 10.2 become materially false or misleading, Seller covenants that it shall provide prompt Notice to Buyer describing such default along with a description of its efforts to cure such default.

(iv) Seller hereby covenants and agrees that all Debt secured by a lien on the Project shall be Qualified Debt.

## **ARTICLE ELEVEN: TITLE, RISK OF LOSS, INDEMNITIES**

11.1 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person (other than Buyer or any Person claiming under or through Buyer) arising prior to or at the Delivery Point.

## 11.2 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered under this Agreement up to the Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with applicable Law, including without limitation the CAISO Tariff, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement at and after the Delivery Point, (ii) the failure by Buyer to comply with applicable Law, including without limitation the CAISO Tariff, or (iii) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

(c) Survival. Notwithstanding anything herein to the contrary, the obligations of the Parties under this Section 11.2 shall survive the termination of this Agreement with respect to any matters arising prior to such termination.

## **ARTICLE TWELVE: DISPUTE RESOLUTION**

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article 12. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 12.

## 12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 12.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

12.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 12.2 above shall be resolved through binding arbitration by a retired judge or justice from the JAMS panel conducted in San Diego, California, administered by and in accordance with JAMS Comprehensive Arbitration Rules and Procedures ("Arbitration").

(a) Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. 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 JAMS Comprehensive Arbitration Rules and Procedures.

(b) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good

cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(c) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

(e) The arbitrator's award shall be made within four (4) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.

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

(g) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.

(h) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.

(i) The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error to the extent permitted by applicable Law.

(j) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 13.1.

## **ARTICLE THIRTEEN: MISCELLANEOUS**

### **13.1 Confidentiality.**

(a) General. Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 13.1(b) of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or

(vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 13.1(a) (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) 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.

(b) RPS Confidentiality. Notwithstanding Section 13.1(a) of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, and Delivery Point.

(c) Publicity. Except as otherwise agreed to in this Section 13.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

13.2 Assignment. 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. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a Person who is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer’s prior written consent; provided, however, that the transfer of equity ownership or voting interests of Seller or any direct or indirect parent of Seller to one or more Persons who are Affiliates of Seller shall not constitute an assignment of this Agreement, even if such transfers amount to fifty percent (50%) or more of the equity ownership or voting interests of Seller or any direct or indirect parent of Seller. Without limiting the generality of the foregoing, Buyer agrees to consent to an assignment by Seller if (i) the creditworthiness of the “Seller” hereunder would not be materially and adversely affected; and (ii) the proposed transferee or the managing member or other similar entity controlling the management of Seller following the proposed transfer has, either itself or by contract with other parties, at least five (5) years experience and expertise in the operation of power plants with an aggregate capacity of at least 500 MW. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry. Buyer agrees that any such consent delivered to the financing providers providing Qualified Debt to Seller shall include an acknowledgment, in customary and commercially reasonable form and substance, that the rights

of Buyer under the Option described in Article 14 are subject to the lien of such financing providers. Financing providers may include the U.S. Department of Energy and any other U.S. governmental agency providing financing or a loan guarantee, and any collateral agents or administrative agents.

13.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Default Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after such twelve-month period. In addition, Buyer shall have the right, at its sole expense and during normal working hours, to examine the records of Seller to the extent reasonably necessary to verify Seller's compliance with its representations and warranties set forth in Section 10.2.

13.4 Sarbanes-Oxley and SEC Requirements. The Parties acknowledge that accounting principles generally accepted in the United States of America ("GAAP") and SEC rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller's financial information (but not financial information of Seller's constituent members unless deemed to be included in the Seller's financial information under GAAP). Buyer will require access to certain records, including but not limited to financial records, and personnel of Seller to determine if consolidated financial reporting is required. Buyer hereby acknowledges that, as of the Execution Date, (i) Buyer is not required to consolidate Seller's financial information, and (ii) Seller's financial statements are not considered material to Buyer's or its parent company's financial statements, financial condition or internal controls over reporting. Buyer agrees to provide Seller as much prior written notice as practicable of any event or action proposed to be taken by Buyer or its parent entity that would cause Buyer to be required to consolidate Seller's financial information. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller's financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting then:

(a) Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:

(i) Unaudited financial statements of the Seller prepared, subject to the last clause of this paragraph (i), in accordance with GAAP as of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter), it being agreed that in order to comply with the deadline, it is permissible that the Seller use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements;

(ii) Unaudited financial schedules of the Seller, as necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements, subject to the last clause of this paragraph (ii), in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter), it being agreed that in order to comply with the deadline, it is permissible that the Seller use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements;

(iii) Access to Seller's records, accounting and other, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer's independent auditor or its internal auditors may conduct financial audits as well as internal control audits to determine whether the Seller is in compliance with GAAP and (B) Buyer can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q, and Item 7 on Form 10-K, "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

(iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent, with such changes to reflect that Seller is not subject to SEC rules or Sarbanes-Oxley Act of 2002 and any successor legislation, and accordingly the Seller shall only be required to certify its compliance with GAAP, subject to Seller's use of accruals and prior month's estimates with true-up to actual activity, in subsequent periods, as applicable to Seller; and;

(v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iii) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the quarterly or year to date periods then ended.

(b) If Buyer (i) determines that the financial statements of the Seller would be considered material to the Buyer or its parent company's financial statements, financial condition, or internal controls over financial reporting, and (ii) reasonably determines Seller's internal controls over financial reporting have material weaknesses and significant deficiencies, as defined by the Auditing Standards Board from time to time, Buyer shall provide Notice to Seller accompanied by a written concurrence with Buyer's determinations from Buyer's independent auditors. Upon receipt of such Notice and at Seller's expense, Seller will have thirty (30) days to remediate any material weakness and significant deficiency in Seller's internal controls over financial reporting identified by the Buyer, which Buyer and Buyer's independent auditor, deem to be reasonably necessary to ensure Seller's internal controls over financial reporting are adequate, provided however, only to the GAAP standard specified in Section 13.4(a)(iv) given that the Seller is not subject to SEC rules or Sarbanes-Oxley Act of 2002 or any successor legislation and is not required to operate under the Sarbanes-Oxley control structure.

(c) As soon as reasonably possible, but in no event later than two (2) Business Days following any occurrence of the Seller that would affect the Buyer in any material way (based on materially thresholds supplied by the Buyer in writing, it being agreed that Seller shall have no obligations under this paragraph prior to the 15<sup>th</sup> day after receipt of any such materiality thresholds), Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.

(d) Any information provided to Buyer shall be treated as confidential except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer's financial statements.

(e) Seller shall notify Buyer at any time during the term of this Agreement of any consulting services provided or proposed to be provided to Seller by Buyer's independent auditor. Provided Seller has been given prior written notice of Buyer's then current independent auditor (as of the Execution Date, Deloitte & Touche LLP), Seller is prohibited from engaging such auditor for any consulting service agreements without the express written consent of partner in charge of Buyer's independent audit.

13.5 Entire Agreement. This Agreement, together with the Cover Sheet and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire agreement between the Parties.

13.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

13.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

13.8 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.



13.9 Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

13.10 General. 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. Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

13.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

13.12 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

13.13 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified in herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

13.14 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” application of the “just and reasonable” 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).

13.15 Limited Recourse. Notwithstanding any provision of this Agreement to the contrary, none of Seller’s direct or indirect parents, Affiliates, members, shareholders, partners, officers, directors, employees, agents, attorneys or representatives, and their respective successors and assigns, shall be liable or responsible for any of the performance of any of the obligations or liabilities of Seller hereunder.

#### **ARTICLE FOURTEEN: OPTION TO PURCHASE PROJECT**

14.1 Definitions. For purposes of this Article 14, the following terms shall have the meanings provided below:

- (a) “Asset Assignment Documents” has the meaning set forth in Section 14.8(a).
- (b) “Assumed Liabilities” means all liabilities and obligations relating to the Project Assets arising or occurring after the Option Closing Date.
- (c) “Buyer Closing Actions” has the meaning set forth in Section 14.8.
- (d) “Buyer Closing Conditions” has the meaning set forth in Section 14.10.
- (e) “Buyer Indemnified Group” has the meaning set forth in Section 14.13(a)(i).
- (f) “Casualty Event” has the meaning set forth in Section 14.14(a).
- (g) “Disclosure Schedules” has the meaning set forth in Section 14.6.
- (h) “Excluded Assets” means:
  - (i) Cash.
  - (ii) Accounts receivable relating to the period prior to the Option Closing Date, including amounts owing under this Agreement.
  - (iii) Agreements between Seller and Buyer or any other third party for the sale of any Product.

- (iv) Contracts between Seller and Affiliates of Seller.
- (v) Other contracts not relating to the ownership or operation or the Project and contracts not otherwise approved in writing by Buyer.
- (vi) Seller's employees.
- (vii) Seller's insurance policies.
- (viii) Claims by Seller against Buyer or any other third parties arising out of the period prior to the Option Closing Date.

(i) "Excluded Liabilities" means:

(i) All liabilities and obligations relating to the Project Assets arising or occurring prior to the Option Closing Date (provided that listing of other items below will not be read to limit the generality of this item).

(ii) All liabilities and obligations with respect to trade accounts payable arising in connection with the Project Assets and in existence on the Option Closing Date.

(iii) Liabilities or obligations associated with or arising from the Excluded Assets and the ownership, operation and conduct of any business by Seller, its Affiliates or any of their successors in interest in connection therewith.

(iv) Liabilities or obligations of Seller or its affiliates resulting from entering into, performing their respective obligations pursuant to or consummating the transactions contemplated by this Agreement or in connection with Seller's obtaining any consent, authorization or approval necessary for it to sell, convey, assign, transfer or deliver the Project Assets to Buyer.

(v) Liabilities or obligations of Seller or its affiliates with respect to taxes attributable to the Project Assets for taxable periods ending on or prior to the Option Closing Date, including any supplemental tax liability related to activity or state of facts at the Project conducted on or before the Option Closing Date that arises after the Option Closing Date, except that Buyer will be obligated to pay its prorated portion of current property taxes as provided below and all property taxes relating to any periods beginning on or after the Option Closing Date.

(vi) Liabilities or obligations of Seller or its Affiliates arising out of or related to any claim against Seller or its Affiliates or any third party claim which adversely affects the Project Assets and which shall have been asserted on or prior to the Option Closing Date or to the extent the basis of which shall have arisen exclusively on or prior to the Option Closing Date.

(vii) Liabilities or obligations of Seller to a third party arising from any injury to or death of any person or damage to or destruction of any property (including, without

limitation, workers' compensation claims, discrimination, wrongful discharge, or unfair labor practice), whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Seller arising prior to the Option Closing Date.

(viii) Liabilities or obligations of Seller or its Affiliates representing Debt incurred by Seller or its Affiliates.

(ix) Any liabilities, obligations or responsibilities relating to any "employee benefit plan" (as defined in Section 3(3) of ERISA) maintained by Seller (or its affiliates) and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with Seller (or its Affiliates) under Section 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as it may be amended from time to time (an "ERISA Affiliate") or to which Seller (or its Affiliates) and any ERISA Affiliate contributed thereunder (the "ERISA Affiliate Plans"), including any multiemployer plan, maintained by, contributed to, or obligated to contribute to, at any time, by Seller (or its Affiliates) or any ERISA Affiliate (hereinafter referred to as "Benefit Plans"), including any liability (i) to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (ii) with respect to non-compliance with the notice and benefit continuation requirements of COBRA; (iii) with respect to any non-compliance with ERISA; or (iv) with respect to any suit, proceeding or claim which is brought against any Benefit Plan, ERISA Affiliate Plan, any fiduciary or former fiduciary of any such Benefit Plan or ERISA Affiliate.

(j) "Fair Market Value" has the meaning set forth in Section 14.3.

(k) "Ground Lease" means that certain Solar Energy Facility Site Lease Agreement to be entered into by and between the Ground Lessor, and Seller (as assignee of CSOLAR DEVELOPMENT, LLC, formerly known as Lightsource Renewables, LLC, a Delaware limited liability company), as lessee, pursuant to that certain Lease Option Agreement between said lessor, as optionor, and lessee, as optionee, dated February 26, 2010, as amended by a First Amendment to Lease Option Agreement between said lessor and lessee, that is to be executed.

(l) "Ground Lessor" means OMNI FINANCIAL, LLC, a California limited liability company (as to an undivided 74.026% interest), REHCO HOLDINGS, LLC, a California limited liability company (as to an undivided 6.494% interest), RTK INVESTMENTS, LLC, a Delaware limited liability company (as to an undivided 6.493% interest), and DAVID L. WOOD, Trustee of the David L. Wood Revocable Trust Dated August 30, 2005 (as to an undivided 12.987% interest).

(m) "Indemnitee" has the meaning set forth in Section 14.13(c).

(n) "Indemnitor" has the meaning set forth in Section 14.13(c).

(o) "Notice of Claim" has the meaning set forth in Section 14.13(c).

(p) "Option" has the meaning set forth in Section 14.2.

- (q) “Option Closing Date” has the meaning set forth in Section 14.5(b).
- (r) “Option Exercise Date” has the meaning set forth in Section 14.4(b).
- (s) “Option Exercise Notice” has the meaning set forth in Section 14.4(b).
- (t) “Option Purchase Price” has the meaning set forth in Section 14.3.

(u) “Permitted Liens” means (a) liens imposed by any Governmental Authority for any taxes which are not yet due; (b) zoning, building codes and other land use laws regulating the use or occupancy of the Project site or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Project site but solely to the extent same do not interfere in any material respect with the operation of the Project; (c) minor non-monetary defects, easements, rights-of-way, restrictions and other similar non-monetary encumbrances or exceptions to title which do not materially impair the property affected thereby for the purpose for which title was acquired or materially interfere with the operation of the Project; (d) the Lessor’s fee interest in the property underlying the Ground Lease and any matters related to Lessor’s fee interest in such property; (e) any mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement on or affecting the Lessor’s interest in the property underlying the Ground Lease but only to the extent the beneficiary of each of the foregoing mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement agrees not to disturb lessee’s interest in the Ground Lease through a customary recognition, non-disturbance, and attornment agreement or other agreement of similar effect; (f) the terms and conditions of the Ground Lease; (g) liens in favor of the financial providers providing Qualified Debt to Seller, and (h) easements, rights-of-way, restrictions and other similar non-monetary encumbrances or exceptions to title of record, whether existing as of the date of execution of the Ground Lease or subsequently created or incurred by Seller which do not materially impair the property affected thereby for the purpose for which title was acquired or materially interfere with the operation of the Project.

(v) “Project Assets” means:

(i) The Project.

(ii) All equipment, fixtures, improvements, solar panels, transformers, inverters, communications equipment, electrical interconnection facilities, machinery, computer hardware, software (to the extent assignable) and other tangible personal property located at and used in the operation of the Project, and all warranties and guarantees, express or implied, existing for the benefit of Seller in connection with the foregoing.

(iii) All real property interests and real property leasehold interests held by Seller in connection with the ownership or operation of the Project, including Seller’s leasehold interest under the Ground Lease, together with all buildings, improvements, structures and fixtures thereon owned by Seller, and all easements, privileges, rights-of-way, lands underlying any adjacent streets or roads, appurtenances, licenses and other rights owned by Seller pertaining to or accruing to the benefit of such property.

(iv) To the extent assignable, all Governmental Approvals associated with or necessary for the ownership or operation of the Project and all pending applications therefor or renewals thereof.

(v) All water rights (including all Government Approvals permitting or otherwise authorizing the consumption and other use of water for the operation of the Project) associated with the Project and required for the ownership or operation of the Project and all pending applications therefor or renewals thereof.

(vi) All intellectual property rights to the extent required exclusively for the ownership or operation of the Project, including licenses, patents, trademarks, copyrighted materials, know-how, trade secrets, confidential or proprietary information, technical information, blueprints, software and process technology.

(vii) All rights and entitlements under any contract, agreement, plan or specification, instrument, registration, license, franchise, or certificate of occupancy, and any intangible property rights (including goodwill and going concern value) constituting a part of the Project, but only to the extent not constituting Excluded Assets.

(viii) To the extent then in existence and retrievable following commercially reasonable efforts, all owned information, files, books, records, as-builts, data, plans, specifications, procedures, addresses and recorded knowledge relating primarily to the Project (in each case whether in electronic or paper form, but if in electronic form not including e-mails), including, but not limited to, construction and development, operation, and generation records, service and repair records, equipment logs, operating documents, specifications, operating guides, service and warranty records, insurance claims and reports, safety, compliance and maintenance manuals, studies, reports, diagrams and other similar documents relating primarily to the development, construction, operation and maintenance of the Project; provided, however, that Buyer shall not acquire or obtain any legally privileged information of Seller and Seller may redact information that is not related to the Project.

(w) “Seller Closing Actions” has the meaning set forth in Section 14.9.

(x) “Seller Closing Conditions” has the meaning set forth in Section 14.11.

(y) “Seller Indemnified Group” has the meaning set forth in Section 14.13(b)(i).

(z) “Tentative Exercise Notice” has the meaning set forth in Section 14.4(a).

14.2 Purchase Option. Seller hereby grants to Buyer the option (“Option”), exercisable by Buyer in its sole discretion from and after the first day of the Delivery Term, to purchase all of Seller’s right, title and interest in and to the Project Assets, but not the Excluded Assets, and assume the Assumed Liabilities, but not the Excluded Liabilities, on and subject to the terms and conditions set forth below.

(a) The Option may only be exercised (i) upon an Event of Default of Seller where Buyer elects a Termination Payment as its remedy, subject to Seller’s right to cure such

Event of Default and cause a rescission of the Termination Payment and the exercise of this Option as provided in Section 5.2, or (ii) as of the end of the Delivery Term, in each case, in accordance with the procedure set forth in Section 14.3. Failure by Buyer to give any of the notices required under Section 14.3 in a timely manner shall be deemed a failure to exercise the Option.

(b) The Option may only be exercised with respect to all of Seller's right, title and interest in and to the Project Assets, and not with respect to only a portion thereof.

(c) Buyer agrees to cooperate with Seller and Seller's financing providers to make such modifications to the Option and the provisions of this Article 14 as may be requested by such financing providers so long as such modifications do not materially alter Buyer's essential right to acquire the Project on substantially the terms and conditions set forth in this Article 14.

14.3 Option Purchase Price. The purchase price for the Project pursuant to the Option (the "Option Purchase Price"), including all adjustments, if any, under Section 14.3(b), shall be equal to the Fair Market Value of the Project (based on the Project Assets, the Excluded Assets, the Assumed Liabilities, and Excluded Liabilities, as supplemented by the Disclosure Schedules) as of the Option Closing Date. As used herein, "Fair Market Value" means the price in cash that a willing buyer would pay to a willing seller, and that a willing seller would accept from a willing buyer, neither of them being under a compulsion to buy or sell, utilizing valuation methods commonly used and accepted in the independent electric generating industry and taking into account all relevant facts and circumstances relating to the Project Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities, and the Disclosure Schedules, as of the Option Closing Date. The Fair Market Value of the Project shall be determined without reference to the terms and conditions of the sale of Product under this Agreement, i.e. the Energy and other Products generated by the Project will be assumed to be sold at their then current fair market value.

(a) For purposes of delivering an Option Exercise Notice, the Option Purchase Price will be determined pursuant to Section 14.4(a).

(b) For purposes of determining the final Option Purchase Price paid by Buyer to Seller as of the Option Closing Date, the Option Purchase Price will be determined as follows.

(i) No later than the date that is thirty (30) days prior to the expected Option Closing Date, Buyer shall provide Seller with updated Disclosure Schedules which shall be the final Disclosure Schedules for purposes of its representation and warranties made under Section 14.6 as of the Option Closing Date.

(ii) The Option Purchase Price shall be adjusted by the amount, as determined by the Parties in good faith, or absent their mutual agreement by the Qualified Appraiser, as appropriate, to compensate Buyer for any differences between the Disclosure Schedules originally delivered to Buyer under Section 14.4(a) and the Disclosure Schedules delivered to Buyer under this Section 14.3(b), for the inability of Seller to satisfy the Buyer

Closing Conditions set forth at Sections 14.10(g), or for a Casualty Event or event of Force Majeure as described under Section 14.14. In making this determination, the Qualified Appraiser shall disregard any materiality qualifications set forth in such representation or warranty. The net amount shall be determined by the Qualified Appraiser within fifteen (15) days of written demand by either Party requesting such determination. The parties agree to execute a joint engagement agreement with the Qualified Appraiser on appropriate terms (including provisions for exculpation and indemnity) pursuant to which the fees and expenses of the Qualified Appraiser related to this Section 14.3(b) shall be borne 50% by Buyer and 50% by Seller. In the event that the original Qualified Appraiser is unable or unwilling to serve as Qualified Appraiser under this Section 14.3(b), and Buyer and Seller are unable to come to agreement with respect to an alternate Qualified Appraiser, the provisions of Section 14.4(a)(ii) shall be applied to select an alternate Qualified Appraiser.

(iii) In addition, the Option Purchase Price shall be adjusted by the amount (which can be positive or negative) reflecting a proration as between Buyer and Seller as of the Option Closing Date of utilities, rent, property taxes and other ongoing charges typically prorated by buyers and sellers. All amounts due and owing under this Agreement shall, to the extent reasonably possible, be reconciled and paid by the applicable Party or Parties on the Option Closing Date or as soon thereafter as reasonably possible.

14.4 Exercise of Option. The Option must be exercised, if at all, in accordance with the following procedure:

(a) If Buyer desires to exercise the Option, Buyer shall send a written notice (the “Tentative Exercise Notice”) to Seller, (i) concurrently with delivery of its Notice of an Early Termination Date, if Buyer elects a Termination Payment as its remedy following an Event of Default of Seller, or (ii) not less than twenty-four (24) months and not more than thirty-six (36) months before the end of the Delivery Term, indicating its nonbinding desire to exercise the Option pursuant to the terms set forth herein.

(i) No later than thirty (30) days after its receipt of the Tentative Exercise Notice, Seller shall provide Buyer with the Disclosure Schedules contemplated in Section 14.6 below.

(ii) No later than thirty (30) days after Buyer’s receipt of such Disclosure Schedules, Seller and Buyer will meet and attempt to agree on the Option Purchase Price based on the Disclosure Schedules originally delivered to Buyer under Section 14.4(a). If they are unable to do so within sixty (60) days after delivery by Buyer of the Tentative Exercise Notice, the Parties will, within fifteen (15) days after the end of such sixty (60) day period, jointly appoint a single Qualified Appraiser who will then determine the Option Purchase Price within thirty (30) days after he or she is appointed. If the Parties are unable to agree on single Qualified Appraiser within such fifteen (15) day period, they shall each designate a Qualified Appraiser, and those two Qualified Appraisers shall jointly appoint a third Qualified Appraiser who will then determine the Option Purchase Price within thirty (30) days after his or her appointment based on an appraisal of the Fair Market Value of the Project (considering the Project Assets, Excluded Assets, Assumed Liabilities, Excluded Liabilities, and the Disclosure Schedules delivered to Buyer under Section 14.4(a)). If the Option Purchase Price is determined



by a Qualified Appraiser, the fees and costs of such Qualified Appraiser will be paid (i) equally by Seller and Buyer, if Buyer subsequently delivers an Option Exercise Notice, or (ii) entirely by Buyer, if Buyer subsequently delivers or is deemed to deliver an Option Termination Notice. If it is necessary that each Party designate a Qualified Appraiser in order to have them jointly appoint the Qualified Appraiser who determines the Option Purchase Price, each Party will pay the fees and costs of the Qualified Appraiser whom such Party designated. The Option Purchase Price determined by the Qualified Appraiser pursuant to this Section 14.4(a) shall be final and binding on the Parties, except as adjusted pursuant to Section 14.3(b).

(iii) Commencing on the date that Buyer delivers to Seller its Tentative Exercise Notice, Buyer and the Qualified Appraiser shall have the right to inspect and evaluate the Project Assets upon reasonable advance notice, during normal business hours and in compliance with all site safety and other rules and regulations. In connection therewith, Buyer, the Appraiser, and its and their authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and Seller agrees to cooperate and provide all documents and materials related to the Project Assets that are reasonably requested by Buyer or the Qualified Appraiser.

(b) If Buyer desires to exercise the Option after the Disclosure Schedules have been delivered and the Option Purchase Price has been determined pursuant to Section 14.4(a), Buyer must give written notice of exercise (the “Option Exercise Notice”) to Seller stating that Buyer is electing to exercise the Option under this Agreement on the Option Closing Date. The Option Exercise Notice must be given on a date (the “Option Exercise Date”) that is not more than thirty (30) days after the Option Purchase Price has been determined pursuant to Section 14.4(a). The delivery of an Option Exercise Notice by Buyer shall constitute a binding and irrevocable commitment by Buyer to purchase, and shall create a binding obligation of Seller to sell, the Project Assets as specified herein. Upon receipt of the Option Exercise Notice, each of Buyer and Seller agrees as follows with respect to the period until the Option Closing Date.

(i) Buyer and Seller shall use commercially reasonable efforts, and shall cooperate with each other, to obtain all Governmental Approvals and third party consents reasonably required to consummate the transactions contemplated under this Article 14; provided, however, that Buyer shall be solely responsible for filing any applications with the CPUC that it desires to make.

(ii) Buyer and Seller shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do all things reasonably necessary in order to consummate and make effective the transactions contemplated by this Article 14.

(iii) Seller shall give Buyer and its representatives reasonable access, upon reasonable advance notice and during normal business hours to the premises, properties, information and documentation relating to the Project, together with the reasonable opportunity at Buyer’s sole cost and expense to make copies of such information and documentation, provided, that, reasonable prior notice is provided to Seller and such access does not interfere with the ordinary conduct and operation of the Project. Seller shall also make commercially reasonable efforts to make relevant personnel available to Buyer upon reasonable advance

notice and during normal business hours to answer reasonable questions regarding the Purchased Assets.

(iv) Except for performing its obligations under this Article 14 including the consummation of the transactions contemplated hereby, Seller shall (i) conduct its business in the ordinary course consistent with past practice, and (ii) maintain the Project consistent with the better of past practice or Good Industry Practices.

(v) Seller shall promptly deliver or cause to be delivered the following to Buyer after receipt thereof by it: any material and adverse notice or other written communication from any Governmental Authority in connection with the Project or from any party to any project document in which such party asserts in writing a material breach, default or event of default by the Seller, or any material action commenced or threatened in writing by or against Seller or the Project.

#### 14.5 Option Closing.

(a) Subject to the terms and conditions hereof, including the satisfaction of the Buyer Closing Conditions and the Seller Closing Conditions (each as defined below) or the waiver of any thereof by the party for whose benefit such condition(s) exist, other than those conditions that by their nature are to be satisfied at the closing of the purchase and sale of all of the Project Assets contemplated by this Article 14, proceedings for the consummation of the Option closing shall take place at such location, on such date and as early in the morning as is reasonably practical, as is mutually acceptable to the parties, provided that the closing date is intended to occur, unless otherwise agreed by the Parties, (i) as soon as reasonably possible (consistent with the requirements of this Article 14 and subject to Seller's rights under Section 5.2) upon an Event of Default of Seller where Buyer elects a Termination Payment as its remedy, or (ii) at the end of the Delivery Term if Buyer exercises the Option absent an Event of Default of Seller hereunder.

(b) The date on which the Option closing actually occurs is referred to herein as the "Option Closing Date."

(c) For purposes of care, custody and risk of loss of Seller's Project Assets, the Project and the Site, the Option closing shall be effective at the moment in time when the Option closing actually occurs. For all accounting and tax purposes, the Option closing shall be deemed effective at 12:01 AM on the Option Closing Date.

(d) Subject to Buyer's right to inspect the Project, Seller's sale of the Project Assets to Buyer following exercise of the Option shall be on an "as is" basis in its condition on the Option Closing Date, and other than the representations and warranties explicitly set forth in this Agreement, no representations or warranties, whether express or implied, shall be given or deemed given as to the Project or Seller's Project Assets constituting the Project.

14.6 Seller Representations and Warranties. Upon the exercise of the Option and the Option closing, Seller shall be deemed to have made the representations and warranties set forth in this Section 14.6 as of the Option Closing Date. The Parties recognize that it is not presently possible to identify the exceptions to the representations and warranties that will be appropriate

as of the Option Closing Date, which, if it occurs, may be as much as approximately twenty-eight (28) years from the date of this Agreement. Accordingly, pursuant to the procedure and timing set forth in Section 14.4(a), after its receipt of the Tentative Exercise Notice from Buyer, Seller shall prepare schedules setting forth any exceptions to the representations and warranties set forth in Section 14.6 below (“Disclosure Schedules”), whether or not the particular representation and warranty is noted as being subject to a Disclosure Schedule. Following the initial delivery of the Disclosure Schedules, Seller shall have the right until it delivers final Disclosure Schedules as provided in Section 14.3(b)(i), to update any information contained in the Disclosure Schedules if the occurrence of events or the discovery of new information makes the revision of such Disclosure Schedules necessary or desirable, subject to a Purchase Price reduction under Section 14.3(b).

(a) Organization. Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation.

(b) Transaction Consents and Approvals. Except as set forth in Disclosure Schedule 14.6(b), Seller has all Governmental Approvals and third party consents necessary for it to sell the Project Assets and to perform all of its obligations under this Agreement in connection with such sale.

(c) Corporate Authorization. The execution, delivery and performance of all agreements, instruments, certificates and other documents in connection with the exercise and completion of the Option and the transactions contemplated thereby 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 applicable Law.

(d) Enforceability. All agreements, instruments, certificates and other documents executed and delivered in connection with the exercise and completion of the Option and the transactions contemplated thereby constitute legally valid and binding obligations of Seller, enforceable against it in accordance with their respective terms, subject to any Equitable Defenses.

(e) Bankruptcy. Seller is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

(f) Independent Judgment. Seller is acting for its own account, has made its own independent decision to grant the Option and as to whether such transactions are appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of selling the Project Assets pursuant to the Option;

(g) Conduct of Business. Seller has completed the sale of the Project Assets pursuant to the Option in connection with the conduct of its business;

(h) Compliance with Governmental Rules and Permits. Except as set forth in Disclosure Schedule 14.6(h), Seller is in compliance in all material respects with all Laws and material permits applicable to the ownership, operation, and use of the Project.

(i) Environmental Legal Compliance. Except as set forth in Disclosure Schedule 14.6(i):

(i) Seller has not received any written notice or claim from any Person alleging any current liability for personal injury or property damage relating to the Project, or any written notice of any current violation under environmental Law, any current written request for information pursuant to CERCLA, or any current written notice of any order, penalty, investigation, action, suit, claim, proceeding or other action from any Governmental Authority or any other Person with respect to the actual or alleged violation by Seller or the Project, or current liability of any Person with respect to the Project under any environmental Law, Governmental Approval or permit. Nothing in this paragraph shall require disclosure of any such notice or claim that was received more than 3 years prior to the Option Exercise Date and relates to a matter that was fully remedied prior to the Option Exercise Date.

(ii) Seller has not received any written notice that either the Project or the Site is currently the subject of any administrative or judicial actions, complaints, suits, proceedings or investigations pursuant to any environmental Law. Nothing in this paragraph shall require disclosure of any such notice or claim that was received more than 3 years prior to the Option Exercise Date and relates to a matter that was fully remedied prior to the Option Exercise Date.

(iii) To Seller's knowledge but without investigation, neither the Site nor the Project contains any hazardous substances (including polychlorinated biphenyls, asbestos, lead or urea formaldehyde) that, under any environmental Law, (1) imposes on any Person a liability for fines or penalties for non-compliance with environmental Law, or for the performance or reimbursement of the costs of removal, remediation, or other cleanup, or liability for or obligation to reimburse damages to natural resources or (2) has a material adverse effect on the value of the Project or the use or operation thereof.

(iv) To Seller's knowledge, Seller has not disposed of, discharged or released any hazardous substances at the Site, or arranged for the disposal of any hazardous substances to, at or from the Site or at any other location in connection with the Project, other than in compliance with applicable environmental Laws or as has previously been remediated in accordance with applicable environmental Laws.

(v) To Seller's knowledge, Seller is not currently obligated to make, file or give any report or notification to any Governmental Authority regarding the release or discharge of any hazardous substances.

(vi) To Seller's knowledge, other than Permitted Liens, there presently exists no lien in favor of any Person imposed under any environmental Law relating to or in connection with any claim under an environmental Law that has been filed and served on Seller in connection with the Project, and to the knowledge of Seller, no response action or other

remediation by any Governmental Authority has taken place that could form the basis for such a lien under an environmental Law.

(j) Governmental Approvals. Except as set forth in Disclosure Schedule 14.6(j):

(i) Seller or the Project has obtained and holds all Governmental Approvals that are required for the ownership and operation of the Project as it has been operated by Seller. Seller has not amended such Governmental Approvals in any manner which could impair the operation of the Project.

(ii) Each permit held by Seller or otherwise for the benefit of the Project is in full force and effect, and any fixed period for appeal or review of the issuance thereof has lapsed. No such permit is subject to any pending suit, action, investigation, proceeding or appeal (whether judicial, administrative or otherwise) and, to the knowledge of Seller, no such suit, action, investigation, proceeding or appeal is threatened.

(iii) Seller is not in possession of any current written notice of violation or other notification from any Governmental Authority or from any other Person, alleging that it has committed any act, or failed to act, in any manner or under any circumstances which could result in the revocation, material modification or suspension of any permit or consent related to the Project or in any other enforcement action.

(k) Litigation. Except as set forth in Disclosure Schedule 14.6(k), there are no pending or, to Seller's knowledge, threatened, actions, suits, proceedings, investigations or requests for information by any Governmental Authority or other Person which could result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the operation of the Project or any material portion thereof, or the consummation of the transactions contemplated hereby or (b) a claim for damages for which Buyer could be liable or any lien on the Project Assets.

(l) Zoning and Condemnation. Except as set forth in Disclosure Schedule 14.6(l), there are no pending or, to Seller's knowledge, threatened proceedings or governmental actions to modify the zoning classification of, or to condemn or take by power of eminent domain or to classify as a landmark or otherwise impose any similar restraint or restriction on, all or any material part of the Project.

(m) Assets. Except as set forth in Disclosure Schedule 14.6(m):

(i) Seller has provided to Buyer a complete and accurate list of all buildings, fixtures, structures and other improvements owned by Seller and located on the Site.

(ii) Seller has provided to Buyer a complete and accurate list of all equipment, plant and machinery owned by Seller and related to the Project, excluding only those items which have a book value of less than \$10,000 individually, and such schedules specifically indicate any such item of Project assets which is not located on or at the Site and identifies the location thereof.

(iii) Seller has good (with respect to real property marketable) title in the Project Assets free and clear of all liens (other than Permitted Liens).

(iv) The Project Assets include all material assets or properties comprising the Project as operated by Seller prior to the Option Closing Date.

(v) Seller has not amended the leases, easements or permits relating to the Project in any manner that would impair the operation of the Project or disproportionately allocate obligations to the period after the Option Closing Date.

(n) Contracts. Except as set forth in Disclosure Schedule 14.6(n), except in each case as would not be reasonably likely to have a material adverse effect on the operations of the Project, each written agreement that is a Project Asset has been duly authorized, executed and delivered by Seller, and, to Seller's knowledge, by each of the other parties thereto and is in full force and effect and is valid and enforceable in accordance with its terms, subject to Equitable Defenses. Except in each case as would not be reasonably likely to have a material adverse effect on the operations of the Project, no material default or event of default on the part of Seller has occurred and is continuing under any written agreement that is a Project Asset, and Seller has not received any written notice, nor does it have knowledge, that a default or event of default on the part of any other party thereto has occurred and is continuing thereunder or that any other Person has alleged or asserted any such default or event of default by any other party thereto.

(o) Utilities. Except as set forth in Disclosure Schedule 14.6(o), all utility services and interconnections currently necessary for the operation of the Project, including water supply, sanitary and storm sewer facilities, and electric and telephone facilities have been installed and all development or connection charges have been paid.

(p) Taxes. Except as set forth in Disclosure Schedule 14.6(p), there are no liens for taxes upon the Project except for Permitted Liens.

14.7 Buyer's Representations and Warranties. Upon the exercise of the Option and the Option closing, Buyer shall be deemed to have made the representations and warranties set forth in this Section 14.7 as of the Option Closing Date.

(a) Organization. Buyer is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation.

(b) Transaction Consents and Approvals. Buyer has all Governmental Approvals and third party consents necessary for it to purchase the Project and the Site and to perform all of its obligations under this Agreement in connection with such purchase.

(c) Corporate Authorization. The execution, delivery and performance of all agreements, instruments, certificates and other documents in connection with the exercise and completion of the Option and the transactions contemplated thereby 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 applicable Law.

(d) Enforceability. All agreements, instruments, certificates and other documents executed and delivered in connection with the exercise and completion of the Option and the transactions contemplated thereby constitute legally valid and binding obligations of Buyer, enforceable against it in accordance with their respective terms, subject to any Equitable Defenses.

(e) Bankruptcy. Buyer is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) Litigation. Except as may be set forth in its reports filed with the SEC , there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations with respect to the purchase of the Project Assets pursuant to the Option;

(g) Independent Judgment. Buyer is acting for its own account, has made its own independent decision to purchase the Project Assets pursuant to the Option and as to whether such transactions are appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of purchasing the Project Assets pursuant to the Option; and

(h) Conduct of Business. Buyer has completed the purchase of the Project Assets pursuant to the Option in connection with the conduct of its business.

14.8 Buyer's Actions at Option Closing. At the Option closing, Buyer shall take or cause to be taken the following actions (the "Buyer Closing Actions"):

(a) Buyer (as assignee) shall execute and deliver to Seller a deed, a bill of sale and an assignment and assumption agreement with respect to all of the Project Assets in forms reasonably satisfactory to Buyer and Seller (the "Asset Assignment Documents").

(b) Buyer shall pay the Option Purchase Price.

(c) Buyer shall deliver to Seller certificates of good standing issued by the Secretary of State and the Franchise Tax Board of the State of California, each issued within thirty (30) days prior to the Option Closing Date.

(d) Buyer shall deliver to Seller a copy of its articles of incorporation and bylaws, together with a certificate from an authorized officer of Buyer certifying that each such document is true, correct and complete and has not been amended or otherwise modified except as set forth in such copy.

(e) Buyer shall deliver to Seller a copy, certified by an authorized officer of Buyer, of resolutions of Buyer's board of directors authorizing Buyer's execution, delivery and performance of the Asset Assignment Documents and each other document executed by the parties in connection with the Option closing and the transactions contemplated thereby and ratifying this Agreement.

(f) Buyer shall deliver to Seller a certificate executed by an authorized officer of Buyer identifying the name and title and bearing the signature of the officer(s) of Buyer authorized to execute and deliver the Asset Assignment Documents and each other document executed by the parties in connection with the Option closing.

(g) Buyer shall deliver to Seller such other items as may be reasonably requested by Seller.

14.9 Seller's Actions at Option Closing. At the Option closing, Seller shall take or cause to be taken the following actions (the "Seller Closing Actions"):

(a) Seller shall cause all contracts between Seller and any of its Affiliates to be terminated or otherwise make arrangements to convey to Buyer a possessory ownership interest the Project Assets to the greatest degree possible (for example, Affiliate leasing arrangements shall be unwound so that Seller owns assets outright rather than holding a leasehold interest in such asset from an Affiliate of Seller).

(b) Seller (as assignor) shall execute and deliver to Buyer the Asset Assignment Documents.

(c) Following confirmation of delivery of the Option Purchase Price, Seller shall properly execute and deliver to Seller a receipt for the amount thereof.

(d) Seller shall deliver to Buyer a certificate of good standing issued by the Secretary of State of the State of Delaware and a certificate of qualification to conduct business in the State of California issued by the Secretary of State of the State of California, each issued within thirty (30) days prior to the Option Closing Date.

(e) Seller shall deliver to Buyer a copy of its articles of organization and operating agreement, together with a certificate from an authorized officer of Buyer certifying that each such document is true, correct and complete and has not been amended or otherwise modified except as set forth in such copy.

(f) Seller shall deliver to Buyer a copy, certified by an authorized officer of Seller, of resolutions of Seller's board of directors authorizing Seller's execution, delivery and performance of the Asset Assignment Documents and each other document executed by the parties in connection with the Option closing and the transactions contemplated thereby and ratifying this Agreement.

(g) Seller shall deliver to Buyer a certificate executed by an authorized officer of Seller identifying the name and title and bearing the signature of the officer(s) of Seller authorized to execute and deliver the Asset Assignment Documents and each other document executed by the parties in connection with the Option closing.

(h) Seller shall to deliver to Buyer copies (or originals if available) of each of the material contracts that is a Project Asset.



(i) Seller shall deliver to Buyer copies (or originals if available) of each of the Project's permits then in effect.

(j) Seller shall deliver a non-foreign person affidavit as provided by Section 1445 of the Internal Revenue Code of 1986, as it may be amended from time to time, and the regulations thereunder and/or such other documentation Buyer may reasonably request to confirm that Buyer is not required to withhold any taxes from the Option Purchase Price.

(k) Seller shall deliver to Buyer such other items as may be reasonably requested by Buyer.

14.10 Conditions to Obligations of Buyer. The obligation of Buyer to consummate the Option closing is subject to the satisfaction, on or prior to the Option Closing Date, of each of the following conditions, any of which may be waived by Buyer in writing (the "Buyer Closing Conditions"):

(a) Seller shall be in compliance in all material respects with its obligations under this Article 14, the representations and warranties of Seller under Section 14.6 shall be true and correct in all material respects as of the Option Closing Date and there shall be no differences between the Disclosure Schedules originally delivered to Buyer under Section 14.4(a) and the Disclosure Schedules delivered to Buyer under this Section 14.3(b) (provided that, to the extent that any such difference with respect to any such representation or warranty is reflected in an adjustment to the Option Purchase Price under Section 14.3(b), the condition set forth in this Section 14.10(a) shall be deemed satisfied). If a dispute arises between Buyer and Seller with respect to the satisfaction or non-satisfaction of the Buyer Closing Condition set forth in this Section 14.10(a), such dispute shall be exclusively resolved pursuant to Article 12 if it relates to Seller's compliance with its obligations under Article 14 and by an adjustment to the Option Purchase Price under Section 14.3(b) if it relates to Seller's representations and warranties. If such dispute is resolved in favor of Buyer, Seller shall supplement the Disclosure Schedules as necessary to make the representations and warranties true and correct and such supplemental disclosure may result in a reduction of the Option Purchase Price pursuant to Section 14.3(b).

(b) Seller shall have performed in all material respects all applicable Seller Closing Actions and other actions required of it hereunder in connection with the Option closing.

(c) There shall be no (i) injunction, restraining order or similar order of any material nature by any governmental authority of competent jurisdiction over the parties that directs that the Option closing not be consummated, or that the operation or sale and delivery of the output of the Project not continue, or (ii) action taken, or law enacted, promulgated or deemed applicable to the Option closing or the continued operation of the Project, by any governmental authority of competent jurisdiction over the parties that would render the purchase and sale of Seller's Project Assets from Seller to Buyer, or the continued operation or sale and delivery of the output of the Project by Buyer, illegal.

(d) Buyer and Seller shall have received all required regulatory approvals of all governmental authorities required to be obtained in connection with the consummation by

Buyer and Seller of the Option closing (including all necessary approvals by FERC under Section 203 of the Federal Power Act), except those the failure of which to obtain would not have, individually or in the aggregate, a material adverse effect on the ability of the parties to consummate the Option closing or otherwise perform their obligations hereunder, or a material adverse effect on the ability of Buyer to operate, maintain and beneficially use the Project. For the avoidance of doubt, Buyer shall be not be obligated to consummate the Option closing without receipt of a final, nonappealable approval from the CPUC of Buyer's acquisition of the Project Assets and rate recovery for the costs of such acquisition and for the costs of Buyer's operation of the Project, in a form that is acceptable to Buyer in its sole discretion.

(e) Buyer and Seller shall have received all consents and approvals of all third parties necessary for the consummation by Buyer and Seller of the Option closing, except those the failure of which to obtain would not have, individually or in the aggregate, a material adverse effect on the ability of the Parties to consummate the Option closing or otherwise perform their obligations hereunder, or a material adverse effect on the ability of Buyer to operate, maintain and beneficially use the Project.

(f) Buyer shall have received a certificate from Seller, executed on its behalf by an authorized officer of Seller, dated the Option Closing Date, to the effect that Seller's representations and warranties under Section 14.6 are true and correct in all material respects.

(g) Title to the Project shall be free and clear of all liens other than Permitted Liens (provided that to the extent that such non-compliance has been cured or has been resolved by an adjustment to the Option Purchase Price under Section 14.3(b), the condition set forth in this Section 14.10(g) shall be deemed satisfied).

(h) The Option Purchase Price shall have been mutually agreed by the Parties or otherwise determined in accordance with Section 14.3(b).

(i) There shall exist no Force Majeure event that is uncured and continuing or Casualty Event (as defined below) that has not been resolved in accordance with the provisions of Section 14.14, which in any such case has a material adverse effect on the ability of Buyer to operate, maintain and beneficially use the Project.

(j) A title company of Buyer's choice shall be irrevocably committed to issue, conditioned only upon payment by Buyer of its regularly scheduled or agreed premiums, an extended coverage owner's policy of title insurance based upon a recent ALTA survey, including such endorsements as Buyer may reasonably require, insuring Buyer in the amount of the Option Purchase Price, that as of the Option Closing Date, title to the Site (in fee, leasehold, or easement, as applicable) is vested in Buyer, subject only to those exceptions that are Permitted Liens and such additional exceptions as shall have been caused or approved by Buyer or which individually or in the aggregate do not have a material adverse effect on Buyer's ownership or operation of the Project after the Option Closing Date; provided that the premiums and other charges for all such title insurance shall be payable solely by Buyer.

14.11 Conditions to Obligations of Seller. The obligation of Seller to consummate the Option closing is subject to the satisfaction, on or prior to the Option Closing Date, of each of the

following conditions, any of which may be waived by Seller in writing (the “Seller Closing Conditions”):

(a) Buyer shall be in compliance in all material respects with its obligations under this Article 14, and the representations and warranties of Buyer under Section 14.7 shall be true and correct in all material respects as of the Option Closing Date. If a dispute arises between Buyer and Seller with respect to the satisfaction or non-satisfaction of the Seller Closing Condition set forth in this Section 4.9(a), such dispute shall be exclusively resolved pursuant to Article 12.

(b) Buyer shall have performed in all material respects all applicable Buyer Closing Actions and all other actions required of it hereunder in connection with the Option closing.

(c) There shall be no (i) injunction, restraining order or similar order of any material nature by any governmental authority of competent jurisdiction over the parties that directs that the Option closing not be consummated, or that the operation or sale and delivery of the output of the Project not continue, or (ii) action taken, or law enacted, promulgated or deemed applicable to the Option closing or the continued operation of the Project, by any governmental authority of competent jurisdiction over the parties that would render the purchase and sale of Seller’s Project Assets from Seller to Buyer, or the continued operation or sale and delivery of the output of the Project by Buyer, illegal.

(d) Buyer and Seller shall have received all required regulatory approvals of all governmental authorities required to be obtained in connection with the consummation by Buyer and Seller of the Option closing (including all necessary approvals by FERC under Section 203 of the Federal Power Act), except those the failure of which to obtain would not have, individually or in the aggregate, a material adverse effect on the ability of the parties to consummate the Option closing or otherwise perform their obligations hereunder, or a material adverse effect on the ability of Buyer to operate, maintain and beneficially use the Project.

(e) Buyer and Seller shall have received all consents and approvals of all third parties necessary for the consummation by Buyer and Seller of the Option closing, except those the failure of which to obtain would not have, individually or in the aggregate, a material adverse effect on the ability of the Parties to consummate the Option closing or otherwise perform their obligations hereunder, or a material adverse effect on the ability of Buyer to operate, maintain and beneficially use the Project.

(f) Seller shall have received a certificate from Buyer, executed on its behalf by an authorized officer of Buyer, dated the Option Closing Date, to the effect that Buyer’s representations and warranties under this Section 14.7 are true and correct in all material respects.

(g) The Option Purchase Price shall have been mutually agreed by the Parties or otherwise determined in accordance with Section 14.3(b).

(h) All Performance Assurances delivered by or on behalf of Seller to Buyer in connection with the Delivery Term shall have been returned to Seller.

#### 14.12 Failure of Closing Conditions.

(a) Absent an intentional breach by Buyer or Seller of its obligations under this Article 14, or the gross negligence or willful misconduct by Buyer or Seller, the failure of the parties to consummate the Option Closing following Buyer's exercise of the Option due to a failure of one or more Buyer Closing Conditions or Seller Closing Conditions shall not constitute a default by Buyer or Seller, as applicable, under this Agreement, and Buyer's or Seller's, as applicable, sole remedy in such case shall be to waive the applicable Buyer Closing Condition(s) or Seller Closing Condition(s) and proceed with the Option closing or rescind its exercise of the Option, as applicable.

(b) Upon the terms and subject to the conditions of this Article 14, Buyer and Seller shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective in the most expeditious manner practicable the transactions contemplated by this Article 14, including using commercially reasonable efforts to obtain, or assist in the efforts to obtain, approvals from any federal, state, local or other governmental authority which are required by Buyer or Seller to consummate the transactions contemplated herein.

#### 14.13 Indemnification.

##### (a) Indemnification by Seller.

(i) Subject to Section 14.13(a)(ii), from and after the Option Closing, Seller shall indemnify, defend and hold harmless each of Buyer and its affiliates, and each of their respective affiliates, officers, directors, employees, attorneys, agents and successors and assigns (collectively, the "Buyer Indemnified Group"), from and against any and all Claims to the extent arising out of or caused by (A) claims by third parties made in connection with the Excluded Assets or Excluded Liabilities to the extent such third party claims arise out of or are caused by any alleged injury to or death of persons, damage to or loss of tangible property of third parties or any environmental liabilities, (B) any breach or violation of any covenant, obligation, representation or agreement of Seller set forth in this Article 14 or the documents to be executed and delivered in connection herewith, or (C) any breach or inaccuracy of the representations and warranties made by Seller pursuant to Section 14.6.

(ii) The Buyer Indemnified Group shall not be entitled to (i) any punitive, incidental, indirect, special or consequential damages resulting from or arising out of any claim for indemnity under Section 14.13(a)(i) or otherwise relating to the performance or non-performance of this Article 14 or in connection with the transactions contemplated hereby, (ii) indemnification for Claims to the extent caused by its own negligence or willful misconduct or the negligence or willful misconduct of another member of the Buyer Indemnified Group or (iii) indemnification for Claims already indemnified pursuant to Section 11.2. Indemnification under Section 14.13(a)(i) shall be the sole and exclusive remedy of the Buyer Indemnified Group for monetary damages under this Article 14 from and after the Option closing.

(iii) The provisions of this Section 14.13(a) shall survive the expiration or termination of the term of this Agreement.

(b) Indemnification by Buyer.

(i) Subject to Section 14.13(b)(ii), from and after the Option Closing, Buyer shall indemnify, defend and hold harmless each of Seller and its affiliates, and each of their respective affiliates, officers, directors, employees, attorneys, agents and successors and assigns (collectively, the “Seller Indemnified Group”) from and against any and all Claims to the extent arising out of or caused by (A) claims by third parties made in connection with the Project Assets or the Assumed Liabilities to the extent such third party claims arise out of or are caused by any alleged injury to or death of persons, damage to or loss of tangible property of third parties or any environmental liabilities, (B) any breach or violation of any covenant, obligation, representation or agreement of Buyer set forth in this Article 14 or the documents to be executed and delivered in connection herewith, or (C) any breach or inaccuracy of the representations and warranties made by Buyer pursuant to Section 14.7.

(ii) The Seller Indemnified Group shall not be entitled to (i) any punitive, incidental, indirect, special or consequential damages resulting from or arising out of any claim for indemnity under Section 14.13(b)(i) or otherwise relating to the performance or non-performance of this Article 14 or in connection with the transactions contemplated hereby, (ii) indemnification for Claims to the extent caused by its own negligence or willful misconduct or the negligence of willful misconduct of another member of the Seller Indemnified Group, or (iii) indemnification for Claims already indemnified pursuant to Section 11.2. Indemnification under 14.13(b)(i) shall be the sole and exclusive remedy of the Seller Indemnified Group for monetary damages under this Article from and after the Option closing.

(iii) The provisions of this Section 14.13(b) shall survive the expiration or termination of the term of this Agreement.

(c) Notice and Defense of Claim. The parties each agree that, upon commencement by or against it of any action in respect of which indemnity may be sought under Section 14.13(a) or 14.13(b), the party seeking indemnification (the “Indemnitee”) shall promptly give written notice thereof (a “Notice of Claim”) to the party against whom indemnity shall be sought hereunder (the “Indemnitor”), but the failure so to notify such Indemnitor of any such action shall not relieve such Indemnitor from any liability which it may have to the Indemnitee except to the extent that such failure to notify shall adversely affect the rights of the Indemnitor. The Indemnitor shall be entitled to participate at its own expense in the defense or, if it so elects, to assume the defense of such action, in which event such defense shall be conducted by counsel chosen by such Indemnitor and reasonably satisfactory to the Indemnitee who shall be the defendant in such action, and such defendant shall bear the fees and expenses of any additional counsel retained by it; provided, that, if the defendants in any such action include both an Indemnitor and the Indemnitee, and if the Indemnitee shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to the Indemnitor, the Indemnitee shall have the right to select separate counsel to assert such legal defenses and to participate otherwise in the defense of such action on behalf of such Indemnitee. The Indemnitor shall bear the reasonable fees and expenses of the counsel retained by the Indemnitee if (a) the Indemnitee shall have retained such counsel in accordance with the proviso to the preceding sentence, (b) the Indemnitor shall elect not to assume the defenses of such action, (c) the Indemnitor, within a reasonable time after notice of the

commencement of the action, shall not have employed counsel reasonably satisfactory to the Indemnitee to represent the Indemnitee, or (d) the Indemnitor shall have authorized the employment of counsel for the Indemnitee at the expense of the Indemnitor. An Indemnitee shall not enter into a settlement or other compromise with respect to any claim without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld or delayed.

(d) Mitigation. The Indemnitee shall take all reasonable steps to mitigate all Claims relating to a claim for indemnity under this Section 14.13, including availing itself of any defenses, limitations, rights of contribution, claims against third Persons and other rights at law or equity, and shall provide such evidence and documentation of the nature and extent of the claim as may be reasonably requested by the Indemnitor. The Indemnitee's reasonable steps include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any Claim for which indemnification would otherwise be due under this Section 14.13, and the Indemnitor shall reimburse the Indemnitee for the Indemnitee's reasonable expenditures in undertaking the mitigation, together with interest thereon from the date of payment to the date of repayment at the Default Rate. In addition, the amount paid by the Indemnitor for Claims suffered by an Indemnitee shall be reduced by the amount of insurance proceeds received by the Indemnitee in respect of such Claims, as those proceeds may be reduced by costs of the Indemnitee for deductibles resulting from the insurance claim and payment.

#### 14.14 Casualty Events, Force Majeure.

(a) Casualty Event Effect on Option. If, following the exercise by Buyer of the Option, but prior to the Option Closing Date, the Project or any portion thereof suffers any physical damage or destruction that would materially and adversely affect Buyer's ownership and operation of the Project following the Option Closing (a "Casualty Event"), Seller shall as soon as practicable determine the estimated cost to repair and/or rebuild the Project. Seller shall submit such information to Buyer with reasonable supporting documentation. If Buyer and Seller disagree with the estimated scope or cost of repair as provided by Seller, they shall submit the matter to the Qualified Appraiser for resolution as provided in Section 14.3(b). Upon agreement by the Parties or the determination of the Qualified Appraiser, as applicable, as to the scope of repair, the estimated cost to repair and/or rebuild the Project and any necessary changes to the Disclosure Schedules in light of such Casualty Event, Buyer may either rescind its exercise of the Option or proceed with the Option closing and reduce the Option Purchase Price by the amount of the cost to repair. Nothing in this Section 14.14(a) shall restrict the ability of Buyer to exercise the Option after a Casualty Event, and if Buyer exercises its Option after a Casualty Event, and if the Fair Market Value of the Project was determined without reference to the Casualty Event, the provisions of this Section 14.14(a) shall apply as if the Option had been exercised prior to such Casualty Event.


(b) Force Majeure. If, following the exercise by Buyer of the Option, but prior to the Option Closing Date, a Force Majeure event occurs that can reasonably be expected to be remedied in one hundred eighty (180) days or less, the Parties shall extend the Option Closing Date until the abatement or cure of such Force Majeure event. If the Force Majeure event cannot reasonably be expected to be remedied in one hundred eighty (180) days or less, the Parties agree to treat such a Force Majeure event as a Casualty Event and proceed as provided in Section 14.14(a).

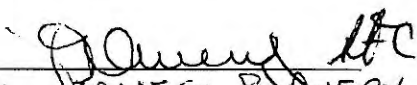
14.15 Memorandum of Option. Within thirty (30) days after the CP Satisfaction Date, Seller shall deliver to Buyer a Memorandum of Option substantially in the form of Exhibit H attached hereto, fully executed and acknowledged for recording by Seller. Buyer shall have the right to record such Memorandum of Option in the official records of the county in which the Project is located.

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

CSOLAR IV WEST, LLC  
a Delaware limited liability company

SAN DIEGO GAS & ELECTRIC COMPANY  
a California corporation

By:   
Name: Barton D. Ford  
Title: Vice President

By:   
Name: JAMES P. WERY  
Title: VP Power Supply



**Exhibit A**

**PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE**

PROJECT DESCRIPTION

Project name Imperial Solar Energy Center-West

Project Site name: Imperial Valley West

Project physical address: Westside Main, South of I-8

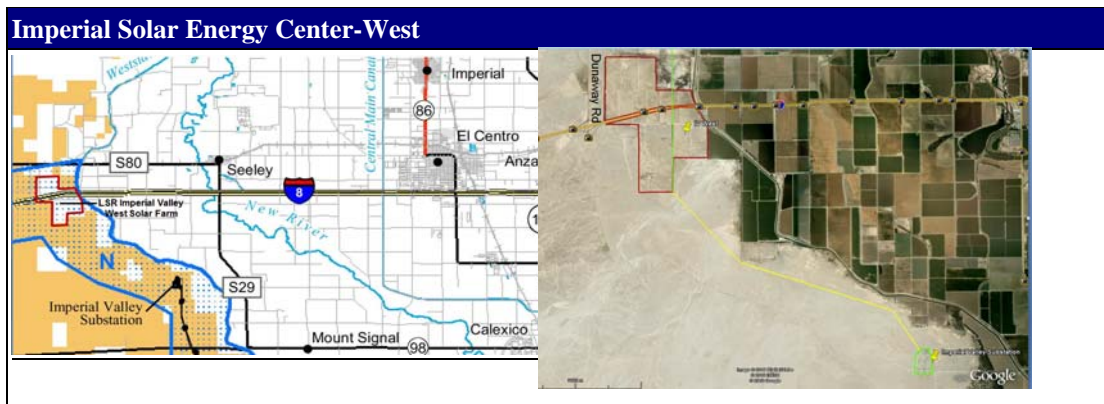
Total number of electric generating units at the Project (committed and not committed to Buyer) 230 - 630 kVA x 1000Vdc x 375Vac Inverters<sup>1</sup>

Technology Type: Concentrating Photovoltaic Solar

Substation: Imperial Valley Substation

The term “Site” as defined in the Agreement means the following parcel description upon which the Project is located:

The project site consists of nine parcels: Assessor Parcel Numbers (APN): 051-290-001; 051-290-003; 051-260-025; 051-260-026; 034-360-075; 034-360-076; 034-360-077; 034-360-078; and, 051-010-007. The site is located east of Dunaway Road, west of the Westside Main Canal, south of Evan Hewes Highway and north of BLM lands, approximately eight miles west of the City of El Centro in Imperial County. The property is bisected by Interstate 8. Imperial County is located in Southern California, bordering Mexico, west of Arizona, and east of San Diego County.



The nameplate capacity of the Project is 140.00 MWac.

The electric generating units utilized as generation assets as part of the Project are described below:

The project will utilize concentrating photovoltaic modules mounted on dual-axis trackers to convert the energy from sunlight directly into electricity. Concentrating photovoltaic modules will be wired together to form photovoltaic arrays. The direct current generated by the arrays will be collected at an inverter where the direct current will be converted to alternating current consistent with the electrical grid. The output from the inverter or group of inverters will then flow through a step-up transformer to increase the voltage for collection. The medium voltage collection system will gather all of the electricity at a common location where the voltage will be stepped up again before final interconnection with the electrical grid.

<sup>1</sup>The number, size and ratings of inverters are all subject to change during the final design process.

**Exhibit B****MILESTONE SCHEDULE**

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1.	7/31/2009	Submits interconnection application.
2.	5/31/2010	Files any land applications.
3.		Files a CEC Certification and Verification application.
4.	5/31/2010	Files Governmental Approval application(s).
5.		Receives CEC Certification and Verification.
6.	12/31/2010	Obtains control of all lands and rights-of-way comprising the Site.
7.	4/1/2012	Executes interconnection agreement and/or transmission agreement.
8.	7/1/2012	Receives FERC acceptance of interconnection agreement and transmission agreement(s).
9.	1/31/2012	Executes an EPC Contract.
10.	12/31/2011	Receives all Governmental Approvals.
11.	4/1/2012	Completes financing.
12.	7/1/2013	Delivers full NTP under EPC Contract/Equipment Supply Contract and begins construction of the Project.
13.	11/1/2013	Begins startup activities.
14.	7/1/2013	Executes Meter Service Agreement and Participating Generator Agreement.
15.	5/1/2014	Achieves initial operation.
16.	12/31/2015	Demonstrates the Contract Capacity.
17.	12/31/2015	Commercial Operation Date.

**Exhibit C**

**FORM OF LETTER OF CREDIT**

[DATE]

To: [Name and Address of Secured Party]

Re: Our Irrevocable Standby Letter of Credit No. \_\_\_\_\_  
In the Amount of US \_\_\_\_\_

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number \_\_\_\_\_ in favor of [name of Secured Party] (“Secured Party”), by order and for account of [name of Account Party] (“Account Party”), [address of Account Party], available at sight upon demand at our counters, at [location] for an amount of US\$ \_\_\_\_\_ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “[name of Account Party] (“Account Party”) is in default under the agreement between Secured Party and Account Party dated \_\_\_\_\_ or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a “default”, “event of default” or similar term as defined in such agreement, any other agreement between Secured Party and Account Party, or otherwise). The amount due to Secured Party is US \$ \_\_\_\_\_.”

or

2- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “[name of Account Party] (“Account Party”) has forfeited all of the Manufacturing Facility Security as set forth and defined the agreement between Secured Party and Account Party dated \_\_\_\_\_. The amount due to Secured Party is US \$5,000,000.”

or

3- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “as of the close of business on \_\_\_\_ [insert date, which is less than forty-five (45) days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Secured Party, whether or not a default has occurred, is U.S. \$ \_\_\_\_\_.”

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Account Party.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 above acceptable.

This Letter of Credit expires on \_\_\_\_\_ at our counters.

We hereby engage with Secured Party that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1 or 2 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

\_\_\_\_\_  
Authorized Signature(s)

**Exhibit D**

**FORM OF GUARANTY**

***GUARANTY***

In consideration of San Diego Gas and Electric Company (“Company”) entering into a power purchase agreement with [NAME OF COUNTERPARTY] (hereinafter referred to as “Applicant”), [NAME OF GUARANTOR], a [TYPE OF LEGAL ENTITY i.e. California corporation], (hereinafter referred to as “Guarantor”) agrees with Company as follows:

1. The term “Obligations” shall mean all obligations, liabilities and indebtedness of any kind whatsoever arising in connection with \_\_\_\_\_ between the Company and Applicant. The amount of Obligations existing from time to time shall be calculated after giving effect to all contractual netting arrangements between Applicant and the Company.

2. Guarantor unconditionally and irrevocably guarantees to Company the full, prompt and faithful payment and performance when due of each and all of the Obligations; provided, however, that Guarantor’s total liability hereunder shall not exceed [INSERT AMOUNT OF REQUIRED PERFORMANCE ASSURANCE].

3. This is a continuing guaranty relating to the Obligations. Guarantor acknowledges that there is a continuing consideration to Guarantor for this Guaranty and therefore Guarantor waives and relinquishes the right to revoke or terminate this Guaranty as provided in California Civil Code Section 2815.

4. Any of the Obligations may be amended, modified, waived, or increased (whether or not beyond any dollar limitation hereunder) from time to time by Applicant and without further authorization from or notice to Guarantor and no such action shall terminate, release, impair, reduce, discharge, diminish or in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse or defense against Company. Company need not inquire into the power of Applicant or the authority of its officers, directors, partners or agents acting or purporting to act in its behalf.

5. With respect to all Obligations, this is a guaranty of payment and performance and not of collection, and Guarantor waives and agrees not to assert or take advantage of:

(a) any right to require Company to proceed against Applicant or any other person or to resort to, proceed against or exhaust any security held by it at any time or to pursue any other remedy in its power before proceeding against any Guarantor;

(b) demand, presentment, protest and notice of any kind including, without limiting the generality of the foregoing, notice of nonperformance, protest, dishonor and acceptance of this Guaranty, notice under Section 9611 of the California Commercial Code, and notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Applicant, Company, a guarantor under this or any other instrument, or creditor of Applicant or any other person whomsoever, in connection with

any of the Obligations or any collateral for any of the Obligations or in connection with any of the Obligations; and

(c) any suretyship defenses and suretyship rights of every nature otherwise available under California law and the laws of any other state or jurisdiction, including, without limitation, all defenses and rights arising under Sections 2787 through 2855 of the California Civil Code (the “Suretyship Provisions”) and any successor provisions to those Sections. Without limiting the generality of the foregoing, Guarantor acknowledges his, her or its understanding that the Suretyship Provisions provide various partial or complete defenses to the recovery by Company from Guarantor and/or grant Guarantor rights the enforcement of which could reduce or eliminate entirely Guarantor’s liability hereunder to Company. Among the defenses and rights contained in the Suretyship Provisions are the following: (1) Section 2809 of the Civil Code, which provides, in part, that the obligation of a surety must not be either larger in amount or in other respects more burdensome than that of the principal; (2) Section 2810 of the Civil Code, which provides, in part, that a surety is not liable if for any reason other than the mere personal disability of the principal there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases; (3) Section 2819 of the Civil Code, which provides, in part, that a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety; (4) Section 2845 of the Civil Code, which provides, in part, that a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor’s power which the surety cannot pursue and which would lighten the surety’s burden; (5) Section 2846 of the Civil Code, which provides that a surety may compel his principal to perform the obligation when due; (6) Section 2847 of the Civil Code, which provides, in part, that if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety; (7) Section 2848 of the Civil Code, which provides, in part, that a surety, upon satisfaction of the obligation of the principal is entitled to enforce remedies which the creditor then has against the principal; (8) Section 2849 of the Civil Code, which provides, in part, that a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor; (9) Section 2850 of the Civil Code, which provides, in part, that whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation; and (10) Section 2822 of the Civil Code, which provides, in part, for a right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation.

6. All existing and future indebtedness of Applicant to Guarantor (“Intercompany Obligations”) is subordinated to all Obligations hereby guaranteed. In the event of any default in the payment of any of the Obligations when due and until the Obligations guaranteed hereby have been paid in full, Guarantor shall pay to Company immediately any payments of such Intercompany Obligations received by Guarantor.

7. Guarantor agrees to pay all attorneys’ fees (including without limitation, reasonably allocated fees of in-house counsel) and all other costs and expenses which may be incurred by Company in the enforcement of this Guaranty against Guarantor.



8. This Guaranty is not assignable by Guarantor without Company's consent. This Guaranty shall inure to the benefit of Company and its successors and assigns, including the assignees of any Obligations, and bind the heirs, executors, administrators, successors and permitted (if any) assigns of Guarantor. This Guaranty is assignable by Company with respect to all or any portion of the Obligations, and when so assigned Guarantor shall be liable to the assignees under this Guaranty without in any manner affecting the liability of Guarantor hereunder with respect to any Obligations retained by Company.

9. This Guaranty shall be governed by and construed in accordance with the laws of the State of California, without reference to its choice of law provisions. Guarantor hereby irrevocably and unconditionally agrees that any legal action or proceeding against Guarantor or any of Guarantor's property with respect to this Guaranty may be brought in the courts of the State of California in the County of San Diego or the courts of the United States in the County of San Diego, as Company may elect, and by executing and delivering this Guaranty Guarantor hereby submits to and accepts with regard to any such action or proceeding for himself, herself or itself and in respect of his, her or its property, generally, irrevocably and unconditionally, the jurisdiction of the above mentioned courts. Guarantor hereby irrevocably appoints the Secretary of State of the State of California as his, her or its agent for service of process in any suit or proceeding if the Guarantor is located outside the State of California at the time of service or cannot reasonably be located by Company. The foregoing, however, shall not limit the right of Company as it may elect to bring any legal action or proceeding or to obtain execution of judgment in any other appropriate jurisdiction including but not limited to any other jurisdiction in which Guarantor or his, her or its property is located.

10. Except as provided in any other written agreement now or at any time hereafter in force between Company and Guarantor, this Guaranty shall constitute the entire agreement of Guarantor with Company with respect to the subject matter hereof and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Company unless expressed herein.

11. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by reliable overnight courier to the address of the Company set forth below (or to such new address as Company may designate hereafter in a notice to Guarantor) in the case of a communication to the Company and to the address appearing next to Guarantor's signature on this Guaranty (or to such new address as Guarantor may designate hereafter in a notice to Company) in the case of a communication to Guarantor. Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified or registered mail or by reliable overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier.

San Diego Gas and Electric Company  
555 W. Fifth Street  
Attn: Major Markets 10E3, Credit Manager  
Los Angeles, CA 90013

Fax No.: (213) 244-8316

12. Until all of the Obligations guaranteed hereby have been satisfied in full, Guarantor shall have no right of subrogation or reimbursement from the Applicant which Guarantor may have as a result of any payment by Guarantor under this Guaranty, and waives any right to enforce any remedy which Company now has or may hereafter have against the Applicant as a result of such payment by Guarantor under this Guaranty and waives any right under section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Company.

13. All amounts payable by Guarantor hereunder shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that Guarantor shall be prohibited by law from doing so, in which case Guarantor shall pay to Company such additional amount as shall be necessary to ensure that Company receives the full amount it would have received if no such deduction or withholding had been made.

14. If any portion of this Guaranty is held to be unenforceable by a court of competent jurisdiction, the remainder of this Guaranty shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty on [MONTH AND DAY], [YEAR].

GUARANTOR:  
[NAME OF GUARANTOR]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name of Person Signing for  
Guarantor

\_\_\_\_\_  
Guarantor's Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Guarantor's Phone No.

**Exhibit E****COMMERCIAL OPERATION CERTIFICATE**

---

The undersigned, [\_\_\_\_\_] (“Licensed Professional Engineer”) and [\_\_\_\_\_] (“Owner”) make the following certifications to San Diego Gas & Electric Company (“SDG&E”), dated as of [\_\_\_\_\_]. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated [\_\_\_\_\_] between Owner and SDG&E (the “Agreement”).

**Owner hereby certifies that:**

1. The [full generation capacity of the currently commissioned portion of the Project net of all Station Service] [Contract Capacity of the Project] is [\_\_\_] MWac at [\_\_\_\_\_] conditions.
2. Except for punch list items that would not materially affect the performance, reliability or safe operation of the [currently commissioned [\_\_\_] MWac portion of the] Project:
  - a. the [currently commissioned [\_\_\_] MWac portion of the] Project has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals and the Agreement;
  - b. the interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the [currently commissioned [\_\_\_] MWac portion of the] Project to be received at the Delivery Point;
  - c. the [currently commissioned [\_\_\_] MWac portion of the] Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [minimum performance guarantees].
3. All necessary arrangements for the prudent and proper operation and maintenance of the Project have been put in place and are in full force and effect.
4. Owner has a valid leasehold or real property interest in the Project Site for a term of at least 25 years from the [expected] Commercial Operation Date.
5. Owner has obtained all governmental approvals necessary for the continuous commercial operation of the [currently commissioned [\_\_\_] MWac portion of the] Project and the [currently commissioned [\_\_\_] MWac portion of the] Project is in compliance with all such governmental approvals and all other applicable laws in all material respects.

*[COMMERCIAL OPERATION DATE ONLY]*

**Licensed Professional Engineer certifies that:**

1. We have read the Agreement and the EPC Contract and we understand the requirements for the Commercial Operation Date under the Agreement and the requirements for [Commercial Operation/Substantial Completion] under the EPC Contract.
2. We have reviewed the material and data made available to us by the Owner and the EPC Contractor for the Project.
3. To the extent reasonable based on the level of diligence typically undertaken for similar projects by licensed professional engineers engaged by lenders, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certificates of Owner and find the representations provided to be correct in all material respects.
6. We have reviewed all Governmental Approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.
7. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of the date hereof, Commercial Operation Date has occurred as defined in the Agreement.

Executed this \_\_\_ day of \_\_\_, 200\_

**OWNER**

*[Name of Owner]*

a \_\_\_\_\_ limited liability company

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

Name:

Title:

*[COMMERCIAL OPERATION DATE ONLY]*

**LICENSED PROFESSIONAL ENGINEER:**

*[Name of Licensed Professional Engineer]*

a \_\_\_\_\_

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

Name:

Title:

ACCEPTED BY SAN DIEGO GAS & ELECTRIC COMPANY

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

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

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

Date: \_\_\_\_\_

**Exhibit F**  
**FORM OF QUARTERLY PROGRESS REPORT**

**Quarterly Progress Report**  
**of**  
[ \_\_\_\_\_ ]  
**(“Seller”)**

**provided to**  
**San Diego Gas & Electric Company**

[Date]

## Table of Contents

[Insert Table of Contents]

## 1.0 Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Power Purchase Agreement by and between \_\_\_\_\_ (“Seller”) and San Diego Gas & Electric Company dated \_\_\_\_\_, \_\_\_\_ (the “Agreement”).

Seller shall review the status of each significant element of the Project schedule and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Project or the Project schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that Conditions Precedent and the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Condition or Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Condition or Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Condition or Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Condition or Milestone;

(iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Quarter Quarterly Progress Report to [\_\_\_\_], together with all attachments and exhibits, with [3] copies of the Report delivered to [\_\_\_\_] and [\_\_\_\_\_].



## **2.0 Executive Summary.**

### **2.1 Major activities to be performed for each aspect of the Project during the current calendar quarter.**

Please provide a brief summary of the Major<sup>2</sup> activities to be performed for each of the following aspects of the Project during the current calendar quarter:

- 2.1.1 Design
- 2.1.2 Engineering
- 2.1.3 Major Equipment procurement
- 2.1.4 Construction
- 2.1.5 Milestone report
- 2.1.6 Permitting (See Section 3.0)

### **2.2 Major activities scheduled to be performed in the previous calendar quarter but not completed as scheduled.**

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar quarter and their status, including those activities that were not completed as scheduled:

- 2.2.1 Design
- 2.2.2 Engineering
- 2.2.3 Major Equipment procurement
- 2.2.4 Construction
- 2.2.5 Milestone report
- 2.2.6 Permitting

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<sup>2</sup> For Purposes of this Report, “Major” shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Facility or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller’s inability to achieve a Milestone Date.

**3.0 Permitting.**

The following describes each of the major Governmental Approvals required for the construction of the Project and the status of each:

**3.1 State and/or federal Governmental Approvals.**

Please describe each of the Major state and/or federal Governmental Approval to be obtained by Seller (or EPC Contractor) and the status of each.

DESCRIPTION	STATUS

**3.2 Local and/or county Governmental Approvals.**

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller and the status of each.

DESCRIPTION	STATUS

**3.3 Permitting activities which occurred during the previous calendar quarter.**

Please list all permitting activities which occurred during the previous calendar quarter.

**3.4 Permitting activities occurring during the current calendar quarter.**

Please list all permitting activities which are expected to occur during the current calendar quarter.

**3.5 Permitting Notices received from EPC Contractor.**

Please attach to this Quarterly Progress Report copies of any notices related to permitting activities received from EPC Contractor during the previous calendar quarter.

**4.0 Design Activities.**

**4.1 Table of design schedule to be followed by Seller and its subcontractors.**

The following table lists the design schedule to be followed by Seller and its subcontractors.

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

**4.2 Design activities to be performed during the current calendar quarter.**

Please explain in detail the design activities which are expected to be performed during the current calendar quarter.

**4.3 Table of design activities completed during the previous calendar quarter.**

Please explain in detail the design activities which were completed during the previous calendar quarter.

**5.0 Engineering Activities.**

**5.1 Table of engineering schedule to be followed by Seller and its subcontractors.**

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

**5.2 Engineering activities to be performed during the current calendar quarter.**

Please explain in detail the engineering activities which are expected to be performed during the current calendar quarter.

**5.3 Engineering activities completed during the previous calendar month.**

Please explain in detail the engineering activities which were completed during the previous calendar quarter.

**5.4 Three-month look-ahead engineering schedule.**

Please provide a three-month look ahead engineering schedule.

**6.0 Major Equipment Procurement.**

**6.1 Table of major equipment to be procured by Seller and its subcontractors.**

The following table lists major equipment to be procured by Seller and its subcontractors:

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE


**6.2 Major Equipment procurement activities to be performed during the current calendar quarter.**

Please explain in detail the major equipment procurement activities which are expected to be performed during the current calendar quarter.

**6.3 Major Equipment procurement activities completed during the previous calendar quarter.**

Please explain in detail the major equipment procurement activities which were completed during the previous calendar quarter.

**7.0 Construction Activities.**

**7.1 Table of construction activities to be performed by Seller and its subcontractors.**

The following tables lists construction activities to be performed by Seller and its subcontractors:

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
[Steam] Generator Progress			
Piping Progress			
IC and Electrical Progress			
Subcontractor Progress			

**7.2 Construction activities to be performed during the current calendar quarter.**

Please explain in detail the construction activities which are expected to be performed during the current calendar quarter.

**7.3 Construction activities completed during the previous calendar quarter.**

Please explain in detail the construction activities which are expected to be performed during the previous calendar quarter.

**7.4 EPC Contractor Monthly Progress Report.**

Please attach a copy of the Monthly Progress Reports received during the previous calendar quarter from the EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

**7.5 Three-month look-ahead construction schedule.**

Please provide a three-month look ahead construction schedule.

**8.0 Milestones.**

**8.1 Milestone schedule.**

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar quarter.

**8.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).**

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.2.1 Missed Milestone

8.2.2 Plans to achieve missed Milestone

8.2.3 Plans to achieve subsequent Milestone

8.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

8.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

8.2.6 Delays in construction schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction schedule, and Seller's plans to remedy such impact.

**9.0 Safety and Health Reports**

**9.1 Please list all accidents from the previous calendar quarter:**

**9.2 Any work stoppage from the previous calendar quarter:**

**9.3 Work stoppage impact on construction of the Project:**

I, \_\_\_\_\_, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached Seller's Quarterly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

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

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

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

Date: \_\_\_\_\_

<b>RPS Project Development Status Report</b>			
<b>Project Name</b>			
<b>Date</b>			
Date of Latest Construction Progress Report from Counterparty:			
Project Owner/Counterparty:			
Technology:			
Capacity (MW):	Annual Energy (GWh/year):		
On-Line Date:	Term/Duration (years):		
Construction Start Date:	Point of Delivery:		
Location:			
<b>Status At-A-Glance</b>			
The below to be filled in w/ either: Completed, Acceptable, Unknown, or Concern. See Section B for a description of milestones. When the answer is "Concern" the milestone should be flagged with a notation number where additional detail is provided in Section A.			
Milestones	Status	Initial Completion Date	Projected Completion Date
Fuel/Resource Supply:			
Financing:			
Corporate Financing			
Project Financing			
Site Control (100%):			
Permitting:			
Engineering:			
Major Equipment Procurement:			
Construction:			
Startup Testing and Commissioning:			
Transmission:			
<b>Transmission - Detail</b> (see Section C)			
Dependent Transmission Upgrade(s):			
Scheduled Completion:			
Point of Interconnection:			
Early Interconnection:			
Gen-Tie Length:			
Gen-Tie Voltage:			
ISO Queue Position:			
Feasibility Study (FS):			
System Impact Study (SIS):			
Facilities Study (FAS):			
Remedial Action Plan:			
Additional Comments:			
Date of Preparation:			



Exhibit G

OUTAGE NOTIFICATION FORM

OUTAGE NOTIFICATION FORM

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to TSched@SempraUtilities.com or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage

Previous Notification (if applicable)

Date Sent: mm/dd/yyyy
Time Sent: hh:mm

Generator Name:
Location Code:
Address:

(For times, use 24hr format)

Today's Date: mm/dd/yyyy
Current Time: hh:mm

Contact Name:
Phone Number:
Email:

Outage Start Date: mm/dd/yyyy
Outage Start Time: hh:mm

Alternate Name:
Alternate Number:
Email:

Outage End Date: mm/dd/yyyy
Outage End Time: hh:mm

Outage Duration:
MW Available During Outage:
MW Unavailable During Outage:
RMR Unit? Yes/No

System (Select One)

- Boiler Codes 0010-1999
Generator Codes 4500-4899
Regulatory, Safety, Environmental Codes 9504-9720
Balance of Plant Codes 3110-3999
Pollution Control Equipment Codes 8000-8835
Others Codes 9900-9999
Steam Turbine Codes 4000-4499
External Codes 9000-9040

Cause Code Ranges / Affected Component

(Select One)

Cause Code / Component Problem

(Select One)

Comments

Multiple horizontal lines for entering comments.

**Exhibit H**

**FORM OF MEMORANDUM OF OPTION**

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

San Diego Gas & Electric Company  
8315 Century Park Court  
San Diego, CA 92123  
Attn: \_\_\_\_\_

---

**SPACE ABOVE THIS LINE FOR RECORDER'S USE**

**MEMORANDUM OF OPTION**

THIS MEMORANDUM OF OPTION ("Memorandum"), sated as of \_\_\_\_\_, is made by and between CSOLAR IV WEST, LLC, a Delaware limited liability company ("Seller"), and SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Buyer").

**RECITALS**

A. Seller is the lessee of certain real property described on Exhibit A attached hereto (the "Site") pursuant to that certain Solar Energy Facility Site Lease Agreement to be entered into by and between the Ground Lessor, and Seller (as assignee of CSOLAR DEVELOPMENT, LLC, formerly known as Lightsource Renewables, LLC), a Delaware limited liability company, as lessee, pursuant to that certain Lease Option Agreement between said lessor, as optionor, and lessee, as optionee, dated February 26, 2010, as amended by a First Amendment to Lease Option Agreement between said lessor and lessee, that is to be executed, a memorandum of which was recorded on \_\_\_\_\_ in the Official Records of San Diego County as Document No. \_\_\_\_\_.

B. Seller and Buyer have entered into that certain Power Purchase Agreement dated as of \_\_\_\_\_, 2011 (the "Agreement") pursuant to which, among other things, Seller has granted to Buyer an option to purchase Seller's solar photovoltaic electric generating facility (the "Project") located on the Site, together with Seller's interest as lessee under the Ground Lease.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, Seller and Buyer agree as follows:

1. Option. Seller hereby grants to Buyer an option (the “Option”) to purchase the Project and Seller’s interest as lessee under the Ground Lease on the terms and conditions set forth in the Agreement.

2. Term. The Option may be exercised certain dates on or before \_\_\_\_\_, as provided in the Agreement.

3. Effect of Memorandum. The purpose of this Memorandum is to give notice of the Option and its terms, covenants and conditions to the same extent as if fully set forth herein. This Memorandum shall not modify in any manner the terms, covenants and conditions of the Option as set forth in the Agreement. Seller and Buyer agree that this Memorandum is not intended to and shall not be used to interpret the Option or the Agreement and that, in the event of any conflict between this Memorandum and the Option as set forth in the Agreement, the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

<p>SELLER</p> <p>CSOLAR IV WEST, LLC, a Delaware limited liability company</p> <p>By: _____ Name: _____ Title: _____</p>	<p>BUYER</p> <p>SAN DIEGO GAS &amp; ELECTRIC COMPANY, a California corporation</p> <p>By: _____ Name: _____ Title: _____</p>
--	--

[notarial acknowledgments]

**EXHIBIT A**  
DESCRIPTION OF SITE

[to be attached]