



SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

SOLAR PARTNERS I, LLC

(RAP ID #5208)

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- B. Generating Facility and Site Description.
- C. Notice List.
- D. Forecasting and Scheduling Requirements and Procedures.
- E. Product Produced Using Non-Renewable Fuel & Energy Price for Non-RPS Eligible Product.
- F. Energy Replacement Damage Amount.
- G. Seller's Milestone Schedule.
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- H. Milestone Progress Reporting Form.
- I. Form of Guaranty Agreement.
- J. Non-Disclosure Agreement.
- K. Time of Delivery Periods and Energy Payment Allocation Factors.
- L. Procedure for Partial or Full Return of Development Security.
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- O. SCE Memorandum of Agreement.
- P. Seller's Financial Information for Consolidation.
- Q. SCE Penalties and CAISO Sanctions.
- R. Independent Engineer.
- S. Meteorological Station Specifications.
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RAP ID# 5208, Solar Partners I, LLC

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

SOLAR PARTNERS I, LLC

(RAP ID #5208)

PREAMBLE

This Renewable Power Purchase and Sale Agreement, together with the exhibits, attachments, and any referenced collateral agreement or similar arrangement between the Parties (collectively, the “Agreement”) is made and effective as of the following date: February 5, 2009 (“Effective Date”).

This Agreement is entered into between:

- (i) **Southern California Edison Company** (“SCE”), a California corporation, whose principal place of business is at 2244 Walnut Grove Avenue, Rosemead, California 91770, and
- (ii) **Solar Partners I, LLC** (“Seller”), a Delaware limited liability company, whose principal place of business is at 1999 Harrison Street, Suite 2150, Oakland, California 94612.

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

RECITALS

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

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

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ARTICLE ONE. SPECIAL CONDITIONS

1.01 Generating Facility.

- (a) Name: Solar Partners I.
- (b) Location of Site: to be provided no later than forty-eight (48) months prior to the Forecasted Initial Operation Date, as further described in Section 3.08 and Exhibit B.
- (c) Generating Facility description is located in Exhibit B.
- (d) Delivery Point: The Delivery Point is the point of interconnection associated with the Generating Facility and the CAISO Controlled Grid (the “Delivery Point”), and will be Ivanpah substation, which may be updated in accordance with the provisions of Section 3.08. The CAISO interconnection request associated with CAISO queue position 131 (the “CAISO Queue Position”) shall be used for interconnection of the Generating Facility to the current Delivery Point (Ivanpah substation).
- (e) Eligible Renewable Energy Resource Type: Solar Generating Facility.
- (f) Contract Capacity: As of the Effective Date, the Contract Capacity shall be deemed to be 100 MW. Seller shall provide Notice to SCE of any change to the Contract Capacity on or before the date that is twenty-four (24) months prior to the Forecasted Initial Operation Date, provided in no event shall the Contract Capacity be less than 100 MW nor greater than 110 MW (the “Contract Capacity”).

The Contract Capacity may also be reduced as set forth in Section 3.04(e) or increased as set forth in Section 3.04(g).

- (g) Expected Annual Net Energy Production.

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

$$\text{EXPECTED ANNUAL NET ENERGY PRODUCTION, in GWh's} =$$

$$[(8,760 \text{ hours/year}) \times (\text{Contract Capacity (MWs)}, \text{ as may be updated pursuant$$

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to the provisions of this Agreement) X 0.327)] / 1000

1.02 Forecasted Initial Operation Date.

The Forecasted Initial Operation Date shall be January 31, 2013.

1.03 Startup Deadline.

The Startup Deadline shall be the date which is the later of (i) thirty-six (36) months after the Trigger Date and (ii) three (3) months after the Transmission Completion Date, but in no event later than twelve (12) months after the Forecasted Initial Operation Date, or as may be agreed to in a writing signed by both Parties.

Subject to the foregoing, the Startup Deadline shall be extended on a day-for-day basis for any: (i) lapse or repeal of the Federal Investment Tax Credit Legislation that occurs at any time on or before the date that is twenty-four (24) months prior to the Forecasted Initial Operation Date, (ii) Force Majeure event, (iii) Event of Default of SCE which directly impairs or affects the ability of Seller to achieve the Startup Deadline; or (iv) delay in construction under an agreement for transmission and interconnection access with respect to the Generating Facility, which is not caused or contributed to by Seller; provided that in no case shall the Startup Deadline be extended beyond twelve (12) months after the Forecasted Initial Operation Date.

1.04 Firm Operation Date.

The Firm Operation Date shall be the date that is no later than twelve (12) months after Initial Operation, plus any additional days for Force Majeure as provided in Section 5.04, or as may be agreed to in a writing signed by both Parties. Seller shall provide Notice to SCE of the Firm Operation Date no later than sixty (60) days prior to such date.

1.05 Term.

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

1.06 Energy Price.

The Energy Price for RPS Eligible Product shall be \$125.27 per MWh.

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The Energy Price for Non-RPS Eligible Product shall be, for each relevant Settlement Interval, the CAISO Day-Ahead Market Locational Marginal Price (as defined in the CAISO Tariff) for electric energy at the pricing point used by the CAISO for settlements for this Generating Facility. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

1.07 Performance Assurance Amount.

The Performance Assurance shall be the amount of Two Hundred Twenty Dollars and Eighty-Four Cents (\$220.84) per kilowatt of Contract Capacity.

1.08 Seller's Guarantor.

- (a) Guarantor: An entity that is a party to a Guaranty Agreement in accordance with Section 8.02(c).
- (b) Guaranty Amount: To be supplied if there is a Guarantor.
- (c) Cross Default Amount: To be supplied if there is a Guarantor.

1.09 Seller's Debt to Equity Ratio.

Seller's Debt Percentage 80%,

Seller's Equity Percentage 20%.

*** End of ARTICLE ONE ***

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

ARTICLE TWO. TERM AND CONDITIONS PRECEDENT; TERMINATION

2.01 Effective Date.

This Agreement shall become effective on the Effective Date.

2.02 Obligations Prior to Commencement of the Term.

(a) CPUC Filing and Approval of this Agreement.

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

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

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

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

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

So long as the Delivery Point (Ivanpah substation) in effect as of the Effective Date has not been changed in accordance with Section 3.08, Seller shall neither withdraw the CAISO Queue Position that is to be used for the Generating Facility and this Agreement nor assign or transfer that CAISO Queue Position to any entity or for the benefit of any other power purchase and sale arrangement without the prior written consent of SCE if such assignment or transfer would preclude the use of the CAISO Queue Position for the full Contract Capacity of the Generating Facility. If the Delivery Point is modified in accordance with Section 3.08, Seller shall obtain a position in the CAISO queue for that Delivery Point for the Generating Facility and this Agreement and shall neither withdraw that CAISO queue position nor assign or transfer that CAISO queue position to any entity or for the benefit of any other power purchase and sale agreement without the prior written consent of

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SCE if such assignment or transfer would preclude the use of that CAISO queue position for the full Contract Capacity of the Generating Facility.

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

(c) Seller's Regulatory and Governmental Filings.

(i) No later than forty-eight (48) months prior to the Forecasted Initial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Pre-Certification for the Generating Facility.

(ii) No later than thirty-six (36) months prior to the Forecasted Initial Operation Date, Seller shall:

(1) file an application or other appropriate request with the CEC for CEC Certification and Verification for the Generating Facility;

(2) receive CEC Pre-Certification for the Generating Facility; and

(3) propose a methodology (the "Renewable/Non-Renewable Fuel Use Methodology") to the CEC and the WREGIS administrator for determining the relative quantities of the energy output from the Generating Facility using renewable and non-renewable fuels.

(iii) Seller shall file all applications or other appropriate requests with the proper authorities for all Material Construction Permits (including the CEC AFC if the Site is located in the State of California) in accordance with the Construction Permit Schedule, and promptly respond to any requests for information from the requesting authority.

2.03 Conditions Precedent to Commencement of Term.

(a) Commencement of Term.

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

(b) Initial Operation.

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

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

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

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

- (i) SCE shall have obtained or waived CPUC Approval, as provided herein;
- (ii) Seller shall have met all conditions for Initial Synchronization to occur, as set forth in Section 3.11(b);
- (iii) Seller shall have caused the CAISO to authorize SCE to Schedule the electric energy produced by the Generating Facility with the CAISO as of Initial Synchronization (provided that SCE shall have assisted in Seller's efforts to have SCE authorized as the Scheduling Coordinator for the Generating Facility);
- (iv) Seller shall have posted with SCE the Performance Assurance required under Section 8.02 in the amount set forth in Section 1.07;
- (v) SCE and Seller shall have executed all Security Documents required by Section 8.04;
- (vi) The Generating Facility shall be Operating in parallel with the applicable Transmission Provider's electric system;
- (vii) Seller shall be Forecasting to SCE; and
- (viii) Seller shall have installed and placed in operation the stand-alone meteorological station required under Section 3.06(g).

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2.04 Termination Rights of the Parties.

If either Party exercises a termination right, as set forth in Sections 2.04(a), 2.04(b), 2.04(c), 3.08 or 5.05, the Forward Settlement Amount shall be zero dollars (\$0) and Seller shall be entitled to a return of any Development Security provided to SCE.

(a) Termination Rights of Both Parties.

- (i) Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, in the event CPUC Approval has not been obtained or waived by SCE in its sole discretion within three hundred sixty five (365) days after SCE files its request for CPUC Approval and a Notice of termination is given on or before the three hundred ninety fifth (395th) day after SCE files the request for CPUC Approval.
- (ii) Either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given in the event the Trigger Date has not occurred by January 31, 2010 and a Notice of termination is given on or before February 28, 2010; *provided* that Seller may not terminate under this Section 2.04(a)(ii) if the failure of the Trigger Date to timely occur is due to any negligence, breach, fraud or willful misconduct by Seller.

(b) Termination Rights of SCE

- (i) SCE shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, on or before the date that is sixty (60) days after Seller provides to SCE the results of the latest interconnection facilities study by the CAISO or the Transmission Provider for the interconnection of the Generating Facility in effect on the date of the termination Notice if that study reflects that the total cost of transmission upgrades or new transmission facilities for facilities associated with the CAISO Queue Position at the Delivery Point to SCE, or any Transmission Provider under the jurisdiction of the CAISO, that are not paid by Seller (or are paid by Seller with reimbursement from SCE or any other Transmission Provider) will exceed One Hundred Seventeen Million dollars (\$117,000,000); *provided* that if a CAISO interconnection queue request for a generating facility ahead of the CAISO Queue

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Position for the Generating Facility is withdrawn (an “Unrelated Interconnection Withdrawal”) and such Unrelated Interconnection Withdrawal necessitates a CAISO restudy be conducted for the interconnection of the Generating Facility, SCE shall have the right to terminate this Agreement on Notice as set forth above in this clause (i) if the total cost of transmission upgrades or new transmission facilities to SCE (at the Delivery Point), or any Transmission Provider under the jurisdiction of the CAISO, that are not paid by Seller (or are paid by Seller with reimbursement from SCE or any other Transmission Provider) will exceed the amount related to the specific queue position set forth in the revised interconnection facilities study issued due to the Unrelated Interconnection Withdrawal, as set forth above.

- (ii) SCE shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given, on or before the date that is sixty (60) days after Seller provides to SCE the results of any Interconnection Study by the CAISO or the Transmission Provider for the Generating Facility if SCE shall be required to procure transmission service from any other Transmission Provider to allow SCE to Schedule electric energy and the cost for such transmission service is not reimbursed or paid by Seller.

(c) Termination Rights of Seller.

Seller shall have the right to terminate this Agreement on Notice which shall be effective five (5) Business Days after such Notice is given to SCE if:

- (i) The results of the latest of any Interconnection Study by the CAISO or the Transmission Provider for the Generating Facility performed as of the date of the termination Notice reflect that the sum of (A) the Direct Assignment Facilities costs that Seller is required to pay (herein, the “Unreimbursed Costs”) and (B) the “Finance Costs” attributable to the Network Upgrades costs that are reimbursed by SCE, but are financed by Seller, exceeds Ten Million dollars (\$10,000,000). For purposes hereof, “Finance Costs” means (X) the amount of Network Upgrades financed by Seller times (Y) the difference between (1) the interest rate applicable to Seller’s third-party financing for the Network Upgrades and (2) the interest rate applied by SCE in reimbursing Seller for the cost of the Network Upgrades. Notwithstanding the foregoing, prior to providing a termination Notice to SCE, Seller shall

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first provide Notice to SCE of the amount of (I) Unreimbursed Costs and (II) projected Finance Costs (including reasonable documentation with respect to such costs). SCE shall review such documentation for a period of thirty (30) days after receipt of such Notice and determine, in its sole discretion, if it will pay for such Unreimbursed Costs and Finance Costs above Ten Million dollars (\$10,000,000) and the terms and conditions of such payment. SCE shall provide Notice to Seller of its determination, including, if SCE intends to pay the excess Unreimbursed Costs and Finance Costs, reasonable documentation with respect to the terms and conditions of payment of such costs. If SCE determines that it will not reimburse Seller for such excess costs, Seller may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given to SCE. If SCE determines that it will pay for such excess costs, Seller shall review SCE's proposed terms and conditions of payment and provide Notice if it accepts such terms and conditions within ten (10) Business Days after receipt of SCE's Notice. If Seller accepts SCE's proposed terms and conditions, Seller shall no longer have the right to terminate this Agreement pursuant to this Section 2.04(c)(i).

- (ii) There is a (1) material adverse change to (which means (A) a reduction of greater than 20% in the percentage amount (for example, a reduction of 20% of the current Investment Tax Credit shall mean a reduction of from 30% to 24%) of the Investment Tax Credit, and/or (B) a modification of the Internal Revenue Code that abolishes the ability of investor-owned utilities to utilize the investment tax credit), (2) repeal of, or (3) lapse of the existing Federal Investment Tax Credit Legislation in effect as of the Effective Date at any time prior to the date that is twenty-four (24) months before the Forecasted Initial Operation Date, or such later date as may be agreed to in a writing signed by both Parties, and such Notice is given to SCE not later than thirty (30) days thereafter, or such later date as may be agreed to in a writing signed by both Parties.

(d) Uncured Defaults.

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

(e) End of Term.

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

2.05 [Intentionally Omitted].

2.06 Rights and Obligations Surviving Termination.

(a) Survival of Rights and Obligations Generally.

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

- (i) Seller's right of return of any posted Development Security under Section 3.04(d) or 3.04(e);
- (ii) The obligation of Seller to pay the Energy Replacement Damage Amount under Section 3.05(b);
- (iii) The obligation to make a Termination Payment under Section 6.03;
- (iv) The indemnity obligations to the extent provided in Section 10.03;
- (v) The obligation of confidentiality set forth in Section 10.10;
- (vi) The right to pursue remedies under Sections 6.02 and 10.16;
- (vii) The right to receive a Termination Payment under Section 6.03;
- (viii) The limitation of damages under Article Seven;
- (ix) The obligation of SCE to make payment for CAISO Revenues, if any, during the Startup Period and Energy Payments for Metered Amounts prior to termination under Section 4.02;
- (x) The obligation of Seller to make payments for CAISO Charges, CAISO Sanctions and any SCE Penalties, if any, to the extent that they are attributable to Seller's actions or omissions during the Startup

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Period and the Term pursuant to Section 3.21 and Exhibit Q;

- (xi) The covenants and indemnifications regarding the limitations on Seller's and Seller's Affiliates' ability to offer, make or agree to third party sales as set forth in Sections 2.06(b) and 3.04(f), if applicable; and
 - (xii) The obligation of Seller to maintain Performance Assurance posted as of the termination date under Section 8.02.
- (b) Limitations on Seller's Ability to Make or Agree to Third Party Sales from a Generating Facility after Certain Terminations of this Agreement.

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

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

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

Neither Seller nor Seller's Affiliates may sell or transfer the Generating Facility, or any part thereof, or land rights or interests in the Site (including the CAISO Queue Position, excepting partial assignment or transfer that would not preclude the use of the CAISO Queue Position for the full Contract Capacity of the Generating Facility) during the Restricted Period so long as

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the limitations contained in this Section 2.06(b) apply, unless the transferee agrees to be bound by the terms set forth in this Section 2.06(b) pursuant to a written agreement approved by SCE. Upon termination of this Agreement pursuant to the Sections referenced in the first paragraph of this Section 2.06(b), Seller shall deliver a “Memorandum of Agreement” of SCE’s rights in respect of the Site, in the form attached hereto as Exhibit O, that SCE may record giving notice of SCE’s rights under this Section 2.06(b). To the extent all or a portion of the Site is located on land owned or managed by the U.S. Bureau of Land Management (“BLM”) or another Governmental Authority, then Seller shall use good faith efforts to place on file with the BLM or such other Governmental Authority a notice of SCE’s rights under this Section 2.06(b) and take any other actions and execute and deliver any further documents as may be reasonably requested by SCE to provide notice of SCE’s rights under this Section 2.06(b).

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

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

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ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of Entire Output, Conveyance of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

- (a) Metered Amounts. Seller shall convey the *entire* Metered Amounts during the Term to SCE. Seller shall convey title to and risk of loss of all Metered Amounts to SCE at the Delivery Point.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Capacity Attributes and Resource Adequacy Benefits. In addition, Seller shall dedicate and convey any and all Capacity Attributes and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility during the Term to SCE and SCE shall be given sole title to all such Capacity Attributes and Resource Adequacy Benefits.
- (d) Further Action by Seller. Seller shall, at its own cost, take all actions and execute all documents or instruments necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit throughout the Term, which actions shall include:
 - (i) Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for resource adequacy purposes;
 - (ii) Testing the Generating Facility in order to certify the Generating Facility for resource adequacy purposes;
 - (iii) Complying with all current and future CAISO Tariff provisions that address resource adequacy and are applicable to the Generating Facility, including provisions regarding performance obligations and penalties;

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- (iv) Complying with Applicable Laws regarding the certification and transfer of Renewable Energy Credits, including participation in the Western Renewable Energy Generation Information System (“WREGIS”) (including, if required, registration as a Multi-Fuel Generating Unit, as defined in the operating rules of WREGIS), or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility;
- (v) Complying with the rules, regulations and procedures of the CEC and WREGIS regarding the determination of the amount of RPS Eligible and Non-RPS Eligible Product generated by the Generating Facility;
- (vi) Ensuring that all required and obtained Permits necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits remain in effect and in good standing; and
- (vii) Committing to SCE the full output of the Generating Facility.

For purposes of this Section 3.01(d), Section 3.18 (defining “commercially reasonable efforts”) and Section 10.02(b) (defining “commercially reasonable efforts”), Seller shall not be required to incur out-of-pocket costs in excess of Two Hundred Thousand Dollars (\$200,000) in any calendar year or an aggregate amount of One Million Dollars (\$1,000,000) during the Term.

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

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

- (f) Other Sales of Product. From the Effective Date until the end of the Term, Seller shall not sell the Product (or any portion thereof) to any entity other than SCE, except that:
 - (i) If Seller obtains a Scheduling Coordinator other than SCE, Seller shall

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have the right to sell electric energy generated by the Generating Facility prior to Initial Operation and any Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to such electric energy generated by the Generating Facility prior to Initial Operation, and to retain all proceeds of such sales; and

- (ii) If Seller obtains a Scheduling Coordinator other than SCE, then, in the event of an Extraordinary SCE Force Majeure, Seller may, but shall not be obligated to, sell the electric energy produced by the Generating Facility to a third party but such third party sales may take place only during the period that SCE is not accepting Seller's energy.

3.02 Resource Adequacy Benefits.

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

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

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

3.03 Permits and Interconnection, Transmission Service and CAISO Relationship.

- (a) Seller shall be responsible for obtaining and maintaining any and all interconnection and transmission service rights and Permits required to effect delivery of the electric energy from the Generating Facility to the Delivery Point and to transmit the electric energy on the Transmission Provider's electric system, including a FERC-accepted transmission or distribution service agreement required to transmit such electric energy.
- (b) Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to the interconnection of the Generating Facility to the Interconnection Point.

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- (c) Seller shall comply with the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements required in order for the Generating Facility to comply with the CAISO Tariff.
- (d) Seller shall secure through the CAISO the CAISO Global Resource ID that is to be used solely for this Generating Facility. SCE shall provide assistance to Seller in securing the CAISO Global Resource ID.

3.04 Development Security.

(a) Introduction.

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

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

(b) Full Development Security.

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

- (i) Seller shall post the Full Development Security as follows:
 - (1) One-third of the Full Development Security within thirty (30) days after the Effective Date;
 - (2) One-third of the Full Development Security within thirty (30) days following the date of CPUC Approval; and
 - (3) One-third of the Full Development Security within thirty (30) days following the earlier of (I) the first anniversary of the date of CPUC Approval and (II) the commencement date of construction of the Generating Facility.

The Full Development Security shall be held by SCE and shall be in the form of either a cash deposit or a Letter of Credit;

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- (ii) Any Full Development Security posted in cash shall bear simple interest at a rate equal to the Federal Funds Effective Rate. The calculation and payment of any such interest shall be made in accordance with the procedure specified in Section 4.06 of this Agreement; and
 - (iii) If Seller establishes the Full Development Security by means of a Letter of Credit, such Letter of Credit shall be provided substantially in the form of Exhibit N.
 - (iv) If Seller elects to adjust the Contract Capacity as permitted under Section 1.01(f) and provides Notice to SCE of the same, within thirty (30) days after the date of such Notice, Seller shall post any additional amount required to augment the Full Development Security previously posted to account for the adjusted Contract Capacity and, with respect to any installment of the Full Development Security remaining to be posted, Seller shall post an adjusted amount as required for the adjusted Contract Capacity.
- (c) Forfeiture of Development Security for Failure to Meet Startup Deadline; Extension of the Startup Deadline.

(i) Failure to Meet Startup Deadline.

Subject to Seller's right to extend the Startup Deadline as provided in this Section 3.04(c), Section 1.03, and Section 5.03 (for Force Majeure where Seller is the Claiming Party), in the event that (A) Initial Operation does not occur, or Seller and SCE mutually agree will not occur, on or before the Startup Deadline (including due to any termination of this Agreement as a result of an Event of Default by Seller occurring prior to the Startup Deadline); (B) an interconnection request application is not submitted within one hundred twenty (120) days after the applicable date set forth in the Milestone Schedule; (C) groundbreaking for the Generating Facility does not occur within ninety (90) days after the applicable date set forth in the Milestone Schedule; (D) the procurement of the steam turbine for the Generating Facility does not occur within ninety (90) days after the applicable date set forth in the Milestone Schedule; (E) all Material Construction Permits required for the Generating Facility have not been obtained within one hundred twenty (120) days after the applicable date set

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forth in the Construction Permit Schedule; (F) close of construction financing for the Generating Facility is not completed within one hundred twenty (120) days after the applicable date set forth in the Milestone Schedule; or (G) Abandonment of the Generating Facility, SCE shall be entitled to retain the entire Development Security and terminate this Agreement and, subject to Section 2.06(b), neither Party shall have liability for damages for failure to deliver or purchase Product after the effective date of such termination.

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

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

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

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

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

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

In no event may Seller extend the Startup Deadline for more than a total of one hundred eighty (180) days by the payment of Daily Delay

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Liquidated Damages.

(d) Full Return of Development Security.

The Development Security shall be returned to Seller in accordance with the procedure set forth in Exhibit L and any security interest, if any, on the Development Security shall be released, in each of the following circumstances:

- (i) Subject to Seller's achievement of Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in Section 3.04(c), Seller demonstrates the full Contract Capacity in accordance with the procedure set forth in Exhibit L on or before the Firm Operation Date; or
- (ii) If this Agreement is terminated in accordance with Section 2.04(a), 2.04(b), 2.04(c), 3.08 or 5.05; *provided that*, a termination under Section 5.05 shall only entitle Seller to a return of the Development Security if the termination is based upon a Force Majeure which prevents Seller from achieving Initial Operation by the Startup Deadline or demonstrating full Contract Capacity by the Firm Operation Date.

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

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

- (i) The product of ten dollars (\$10) per kilowatt times the kilowatts of Demonstrated Contract Capacity.

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

In addition, as of the Firm Operation Date:

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- (ii) If the Contract Capacity set forth in Section 1.01(f) is greater than the Demonstrated Contract Capacity, the Contract Capacity set forth in Section 1.01(f) shall be reduced to an amount equal to the Demonstrated Contract Capacity;
- (iii) The Expected Annual Net Energy Production set forth in Section 1.01(g) shall be calculated using such adjusted Contract Capacity;
- (iv) The Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 8.02 shall be recalculated using such adjusted Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Contract Capacity shall be returned to Seller; and
- (v) Neither Party shall have any liability for failure to purchase or deliver Product associated with or attributable to capacity in excess of the Demonstrated Contract Capacity (“Unincluded Capacity”), subject to Section 3.04(f).

Within thirty (30) days after the Firm Operation Date, SCE shall provide Notice to Seller setting forth the adjusted Contract Capacity, Expected Annual Net Energy Production and the revised Performance Assurance Amount.

- (f) Restrictions on Sales Related to Unincluded Capacity.
 - (i) Neither Seller nor Seller’s Affiliates may sell, or enter into an agreement to sell, electric energy, Green Attributes, Capacity Attributes or Resource Adequacy Benefits associated with or attributable to Unincluded Capacity from a generating facility installed at the Site to a party other than SCE for a period of two (2) years following SCE’s Notice to Seller of its partial forfeiture of the Development Security pursuant to Exhibit L.
 - (ii) With respect to Seller’s Affiliates, the prohibition on contracting and sale in the preceding sentence shall not apply if, prior to entering into the contract or making a sale to a party other than SCE, any Seller’s Affiliate wishing to enter into a contract or sale provides SCE with a written offer to sell the electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits related to Unincluded Capacity to SCE on terms and conditions materially similar to or no

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less favorable to SCE than the terms and conditions contained in this Agreement and SCE fails to accept such offer within forty five (45) days after SCE's receipt thereof; *provided that* any Seller's Affiliate wishing to enter into a contract or sale must:

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

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

(g) Increased Contract Capacity Option.

Within twenty-four months after the Initial Operation Date (the "Option Date"), Seller shall have the option of increasing the Contract Capacity of the Generating Facility by an amount not to exceed ten percent (10%) of the Contract Capacity installed as of the Initial Operation Date (the "Increased Contract Capacity Option") and shall provide SCE with Notice regarding the same, including any relevant information required under this Agreement, including an updated Site description in Exhibit B.

As of the Option Date:

- (i) If the Contract Capacity set forth in Section 1.01(f) is less than the Contract Capacity under the Increased Contract Capacity Option, the Contract Capacity set forth in Section 1.01(f) shall be increased to an amount equal to the Increased Contract Capacity Option;
- (ii) The Expected Annual Net Energy Production set forth in Section

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1.01(g) shall be recalculated using such adjusted Contract Capacity;

- (iii) The Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 8.02 shall be recalculated using such adjusted Contract Capacity, and any additional amount of Performance Assurance required for the adjusted Contract Capacity shall be posted by Seller on or before the Option Date.

3.05 Seller's Energy Delivery Performance Obligation.

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

(a) Performance Requirements.

(i) Seller's Energy Delivery Obligation.

Seller's Energy Delivery Obligation for the first Calculation Period shall be equal to the product of (1) seventy percent (70%) times (2) the sum of the Expected Annual Net Energy Production identified in Section 1.01(g) or 3.04(g)(ii), whichever is in effect, for the first Term Year and the second Term Year, and for the second and following Calculation Periods shall be equal to the product of (3) eighty percent (80%) times (4) the sum of the Expected Annual Net Energy Production identified in Section 1.01(g) or 3.04(g)(ii), whichever is in effect, for the two Term Years comprising such Calculation Period.

(ii) Event of Deficient Energy Deliveries.

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

(b) Energy Replacement Damage Amount.

If an Event of Deficient Energy Deliveries occurs, as determined in

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

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

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

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

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

Payment by Seller of any Energy Replacement Damage Amount pursuant to Section 3.05 and Exhibit F shall not relieve Seller of its obligation to pay any Non-RPS Eligible Product Damages Payment in accordance with Section 4.02(c) and Exhibit T.

- (c) Quarterly Statements of Metered Amounts and Lost Output.
 - (i) SCE shall prepare and provide to Seller within thirty (30) days after

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the end of each calendar quarter during each Calculation Period quarterly statements (each a “Quarterly Statement”) showing the sum of Seller’s Metered Amounts plus Lost Output for such completed calendar quarter, the pro rata portion of Seller’s Energy Delivery Obligation for such calendar quarter and, for informational and not billing purposes, any estimated Energy Replacement Damage Amount (as calculated in accordance with Exhibit F) that has accrued for such Calculation Period as of the end of such calendar quarter. SCE’s Quarterly Statement shall be accompanied by a statement of all facts and information relied upon by SCE in formulating its calculation methodologies, including annotated work papers and source data.

- (ii) Seller shall have forty-five (45) days after receipt of a Quarterly Statement to review the statement and provide Notice to SCE of any dispute Seller has with the reported Metered Amounts, Lost Output, pro rata portion of Seller’s Energy Delivery Obligation or estimate of Energy Replacement Damage Amount for such Quarterly Statement. Seller’s Notice shall include Seller’s calculation of the Metered Amounts, Lost Output, pro rata portion of Seller’s Energy Delivery Obligation or estimated Energy Replacement Damage Amount for the Calculation Period as of the end of such calendar quarter, and all facts and information relied upon by Seller in formulating its calculation methodologies and claims, including annotated work papers and source data.
 - (iii) Seller shall make a good faith effort to ascertain and include in its Notice any and all disputes that Seller has with the Quarterly Statement.
 - (iv) The Parties shall negotiate in good faith for a maximum of thirty (30) days to resolve any disputed portion of such Quarterly Statement and shall, as part of such good faith negotiations, promptly provide information or data relevant to the dispute as each Party may possess which is requested by the other Party.
- (d) Continuing Obligations of Seller.

Notwithstanding any payment of an Energy Replacement Damage Amount or any dispute regarding a Quarterly Statement, Seller shall remain obligated to convey all electric energy generated by the Generating Facility and all Green

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Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE during the Term, as provided in Sections 3.01 and 3.02.

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

(a) CAISO Approved Meter.

Seller shall, at its own expense:

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

(b) Check Meter.

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

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

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

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

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

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- (i) SCE shall routinely compare the Check Meter data to the CAISO Approved Meter data.
 - (ii) If the deviation between the CAISO Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, SCE shall provide Notice to Seller of such deviation and the Parties will mutually arrange for a meter check or recertification of the Check Meter or CAISO Approved Meter, as applicable.
 - (iii) Each Party will bear its own costs for any meter check or recertification.
 - (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable SCE-owned meter. Seller has the right to have representatives present during all such tests.
- (d) Access to CAISO Approved Meter.
- (i) Subject to Section 3.17, Seller hereby grants SCE reasonable access to the CAISO Approved Meter and the Check Meter for meter readings and any purpose necessary to effectuate this Agreement.
 - (ii) Seller shall promptly provide SCE access to all meter data and data acquisition services both in real-time, and at later times, as SCE may reasonably request.
 - (iii) Prior to Initial Synchronization, Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide SCE with access to the CAISO Approved Meter and to Seller's settlement data on OMAR.
- Seller shall promptly inform SCE of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO.
- (e) CAISO Approved Meter Maintenance.
- (i) Seller shall test and calibrate the CAISO Approved Meter, as necessary, but in no event shall the period between testing and calibration dates be greater than twenty four (24) months.

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

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

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

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

- (i) Seller shall install and pay for equipment required by SCE to provide SCE, as Scheduling Coordinator, the ability to monitor, in real time, all electric energy generated by the Generating Facility.
- (ii) The data from such equipment shall be centralized into a common supervisory and data acquisition system, otherwise known as SCADA.
- (iii) Such equipment shall be accessed by SCE via SCE's Generation Management System.
- (iv) Seller shall provide operational consent for SCE to use as the communication network interface:
 - (1) The CAISO remote intelligent gateway, otherwise known as a RIG, or data processing gateway, otherwise known as a DPG, or Data Acquisition and Concentrating (eDAC) device; and
 - (2) Energy Communication Network.
- (v) Seller shall install and pay for gas metering equipment, and shall make gas metering data available to SCE through the SCADA.
- (vi) The connection shall be bidirectional in nature and used to exchange

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all data points to and from SCE's Generation Operation Center.

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

In no event shall SCE be entitled to exercise any operational control over the Generating Facility by means of the data access provided by Seller under this Section.

Seller shall comply with all North American Electric Reliability Corporation (NERC) guidelines, to the extent applicable and required, with respect to the data access provided by Seller under this Section.

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

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

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

The station(s) shall be equipped with instruments and equipment that meet those specifications set forth in Exhibit S ("Meteorological Equipment"), as may be modified by SCE from time to time to reflect the applicable CAISO PIRP protocol.

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

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

Telemetry equipment shall be designed to function in accordance with applicable CAISO PIRP protocols.

The station(s) shall be equipped to measure and record the minimum data

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required by the CAISO, in the manner specified by the CAISO.

3.07 Site Control.

- (a) On or before Initial Synchronization and at all times during the Term, Seller shall have Site Control.
- (b) Seller shall provide SCE with prompt Notice of any change in the status of Seller's Site Control.
- (c) Seller shall provide SCE with Notice of the status of its Site Control prior to commencing construction of the Generating Facility.
- (d) On or before Initial Synchronization and at all times during the Term, BrightSource Energy, Inc. (or a wholly-owned subsidiary of BrightSource Energy, Inc.) shall be the person or entity authorized to act on behalf of Seller, by contract or otherwise, in all matters relating to the development and Operation of the Site and the Generating Facility.

3.08 Site Location.

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

On or before the date that is forty-eight months prior to the Forecasted Initial Operation Date, Seller shall provide Notice to SCE of the initial Site designated for the Generating Facility (with the interconnection point with the Transmission Provider at Ivanpah substation), including the information required to complete Exhibit B. No consent of SCE is required with respect to the initial Site.

If Seller proposes to change the Site designated for the Generating Facility, Seller shall promptly provide Notice to SCE of the updated Site.

If the interconnection point with the Transmission Provider for the updated Site for the Generating Facility continues to be located at Ivanpah substation, no further consent of SCE shall be required for such updated Site. In that case, Seller shall promptly provide a revised Exhibit B describing the new Site.

If the interconnection point for the updated Site for the Generating Facility is no longer located at Ivanpah substation, then within thirty (30) days after receipt of the Notice, SCE, acting reasonably, shall by Notice to Seller accept or reject the updated Site.

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If SCE accepts the updated Site, Seller shall promptly provide a revised Exhibit B describing the new Site, and a revised Milestone Schedule (Exhibit G) and Construction Permit Schedule (Exhibit G-1).

If SCE rejects the updated Site, SCE shall include with its Notice the specific reasons for its rejection. The Parties shall then negotiate reasonably and in good faith during the subsequent ninety (90) day period to agree upon the Site to be used for the Generating Facility. If the Parties are able, after negotiation, to agree upon a proposed Site, Seller shall promptly provide a revised Exhibit B describing the new Site and a revised Milestone Schedule (Exhibit G) and Construction Permit Schedule (Exhibit G-1). If the Parties are unable to agree upon the Site after such negotiation period, either Party shall have the right to terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is given.

3.09 Change in Structure, Ownership or Financing.

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

- (a) Seller's exact and complete name, form of organization and state of incorporation or organization; address of Seller's principal place of business, and Seller's principal business;
- (b) Seller's ultimate parent, including Seller's members, general partners, or joint venturers, Seller's chief executive officer or equivalent thereof, Seller's guarantor, as applicable, or Seller's organizational chart showing all of Seller's direct and indirect owners, including its ultimate parent;
- (c) Seller's or Seller's Guarantor's Moody's and S&P's senior unsecured debt rating or, if such entities do not have a senior unsecured debt rating, *then* Seller's or Seller's Guarantor's corporate credit rating or long term issuer rating, if any;
- (d) Seller's anticipated or actual short-term, mid-term and long-term ownership structure of the Generating Facility; and
- (e) Seller's anticipated or actual construction period financing and operating period financing, including the sources of equity investments and debt financings.

The Notice provided pursuant to this Section 3.09 shall not constitute or substitute for

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any consent required pursuant to Sections 10.04 or 10.04(b).

3.10 Design.

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

- (a) Designing and constructing the Generating Facility;
- (b) Using commercially reasonable efforts to acquire all Permits;
- (c) Providing to SCE, at least thirty (30) days prior to the Forecasted Initial Operation Date, the following Generating Facility information:
 - (i) Site plan drawings for the Generating Facility;
 - (ii) Electrical one line diagrams;
 - (iii) Control and data acquisition details and configuration documents;
 - (iv) Major electrical equipment specifications;
 - (v) General arrangement drawings;
 - (vi) Longitude and latitude of each generator;
 - (vii) Artist renderings of the Site, if any;
 - (viii) Aerial photographs of the Site, if any;
 - (ix) Turbine generator specification;
 - (x) Process flow diagrams;
 - (xi) Piping and instrumentation diagrams; and
 - (xii) Solar energy collection grid diagrams.
- (d) Providing SCE advance Notice at the earliest practicable time of any proposed changes in the Generating Facility, but in no event less than thirty (30) days before the changes are to be made, which such Notice shall include the information set forth in Section 3.10(c) above, along with all specifications and drawings pertaining to any such changes and any changes to Exhibit B.

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3.11 Operation and Record Keeping.

- (a) Seller shall Operate the Generating Facility in accordance with Prudent Electrical Practices.
- (b) Prior to Initial Synchronization:
 - (i) Seller shall obtain all Permits, the failure of which to obtain shall have a material adverse effect on the ability of Seller to comply with the terms of this Agreement, including Operation of the Generating Facility;
 - (ii) Seller shall take all steps reasonably necessary to ensure that SCE is authorized (and SCE shall assist Seller in any such steps) by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO prior to Initial Synchronization;
 - (iii) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has executed all necessary Transmission Provider and CAISO agreements;
 - (iv) Seller shall have registered with NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to be a registered entity pursuant to the NERC Reliability Standards;
 - (v) Seller shall demonstrate to SCE's reasonable satisfaction that Seller has complied with its obligations with respect to the CAISO Approved Meter as set forth in Section 3.06(a);
 - (vi) Seller shall have furnished to SCE all insurance documents required under Section 10.11(b); and
 - (vii) One of the following events shall have occurred:
 - (1) Seller shall have received acknowledgment from both the CEC and the WREGIS administrator of the suitability of the Renewable/Non-Renewable Fuel Use Methodology proposed by Seller pursuant to Section 2.02(c)(ii)(3); or
 - (2) Seller shall have registered the Generating Facility as a "Multi-Fuel Generating Unit."

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- (c) Seller shall keep a daily operations log for the Generating Facility that shall include the following information:
 - (i) Circuit breaker trip operations;
 - (ii) Any significant events related to the Operation of the Generating Facility;
 - (iii) Real and reactive power and energy production;
 - (iv) Changes in Operating status;
 - (v) Protective apparatus operations;
 - (vi) Any unusual conditions found during inspections;
 - (vii) Electric energy production for each Settlement Interval; and
 - (viii) Status and settings of generator controls including automatic voltage regulator and power system stabilizer.
- (d) In addition, Seller shall maintain complete records of the Generating Facility's Insolation and other pertinent meteorological conditions and operational status of the Generating Facility.
- (e) Seller shall keep a maintenance log for the Generating Facility that shall include information on maintenance (both breakdown and preventative) performed, outages, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices.
- (f) Seller shall maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with NERC Reliability Standards applicable to protection systems for large electric generators if Seller is required to be a registered entity pursuant to the NERC Reliability Standards.
- (g) Upon Notice from SCE, Seller shall promptly curtail the production of the Generating Facility as required by the CAISO curtailment instruction. Such Notice to curtail production shall be provided to Seller in the event SCE, as Seller's Scheduling Coordinator, is instructed by the CAISO to curtail energy

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deliveries in order to respond to a CAISO Forecasted Over-Generation Condition, a CAISO Declared Over-Generation Condition or an Emergency. SCE shall provide Seller a copy of any written CAISO curtailment instruction contemporaneously with the Notice, or if not possible, as soon as reasonably practicable.

- (h) Information maintained pursuant to this Section 3.11 shall be kept for the Term of this Agreement and shall be provided or made available to SCE within twenty (20) days after any Notice.

The information required in clauses (a), (b), (d) and (f) above shall be provided or made available to SCE within twenty (20) days after any Notice.

3.12 Obtaining Scheduling Coordinator Services.

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

- (a) SCE as Scheduling Coordinator.
 - (i) At least thirty (30) days prior to Initial Synchronization, Seller shall take all actions and execute and deliver to SCE all documents necessary to authorize or designate SCE as Seller's Scheduling Coordinator during the Startup Period and throughout the Term of this Agreement.
 - (ii) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator, except as provided in Section 3.01(f).
- (b) Replacement of Scheduling Coordinator.

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

- (i) Seller shall submit to the CAISO a designation of a new Scheduling

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Coordinator for Seller to replace SCE;

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

3.13 Forecasting.

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

3.14 Scheduled Outages.

- (a) No later than five (5) Business Days prior to the date required by the CAISO for delivery of schedules for planned outages (which such CAISO required delivery dates are currently January 1, April 1, July 1 and October 1 of each calendar year during the Term), and at least sixty (60) days prior to Initial Synchronization, Seller shall submit to SCE its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using the Web Client.
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity expected to be online, in MW, during the planned outage.
- (c) Within twenty (20) Business Days after SCE's receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate SCE's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the CAISO.

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

3.15 Progress Reporting Toward Meeting Milestone Schedule and Construction Permit Schedule.

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

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

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

3.16 Provision of Information.

Seller shall promptly provide to SCE copies of:

- (a) All agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
- (b) All applications and approvals relating to CEC Pre-Certification and Verification, CEC Certification and Verification, any Permits and PIRP;

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- (c) All draft, preliminary, final and revised copies of reports, studies and analyses furnished by the CAISO, Seller's Transmission Consultant, or any Transmission Provider, and any correspondence related thereto, concerning the interconnection of the Generating Facility to the Transmission Provider's electric system or the transmission of electric energy on the Transmission Provider's electric system;
- (d) [Intentionally Omitted]
- (e) Any Solar Resource Evaluation Reports available to Seller, and any revisions thereto, for the time period beginning on the Effective Date and ending on the last day of the first Term Year;
- (f) Any reports, studies, or assessments done for Seller by an independent engineer; and
- (g) All Generating Facility and metering information as may be requested by SCE, including the following, at least thirty (30) days prior to Initial Synchronization:

For each CAISO Approved Meter:

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

For the Generating Facility:

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

3.17 SCE's Access Rights.

Seller hereby grants SCE the right of ingress and egress, with prior reasonable notice to Seller, to examine the Site and Generating Facility for any purpose reasonably connected with this Agreement or the exercise of any and all rights of SCE under Applicable Law or its tariff schedules and rules on file with the CPUC. SCE shall comply with all Site safety rules of which Seller has made SCE aware (including, but not limited to, the laws, rules and regulations of the United States government, the State of California and any other bodies, agencies and departments having jurisdiction over the Site) during any such examination.

3.18 Obtaining and Maintaining CEC Certification and Verification.

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

3.19 Notice of Cessation or Termination of Service Agreements.

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

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Transmission Provider's electric system, for Scheduling to SCE, for delivering Product to SCE, or for metering the Metered Amounts.

3.20 Lost Output Report.

(a) Quarterly Report; SCE Review.

Commencing upon Initial Operation and continuing throughout the Term, Seller shall calculate Lost Output and prepare and provide to SCE a Lost Output Report by the twentieth (20th) Business Day of each month following the end of each calendar quarter in accordance with Exhibit M.

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

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

(b) Disputes of Lost Output.

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

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

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

Seller shall have no right to claim any Lost Output for any calendar quarter that was not identified in the original Lost Output Report for that quarter; *provided that*, Seller may supplement the amount of Lost Output claimed ("Supplemental Lost Output") for the quarter with a supplemental Lost Output Report ("Supplemental Lost Output Report") if Seller can demonstrate that it neither knew nor could have known through the exercise of reasonable diligence about the Supplemental Lost Output within the foregoing ninety (90) day period and Seller provides the Supplemental Lost Output Report within ten (10) Business Days after learning the facts which provide the basis for the Supplemental Lost Output claim.

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(c) Energy Replacement Damage Amount Calculation.

The Lost Output amount that shall be used in the Energy Replacement Damage Amount calculation, set forth in Exhibit F, shall be the amount calculated after the end of each Calculation Period.

3.21 CAISO Charges, CAISO Sanctions and SCE Penalties.

(a) Startup Period.

During the Startup Period, Seller shall be responsible for all CAISO Charges and CAISO Sanctions, if any, attributable to or assessed for test energy delivered by Seller to the real-time market (and any other CAISO administered market that may from time to time be implemented), unless any such CAISO Charges or CAISO Sanctions are due to the act or omission of SCE. SCE shall promptly provide Notice to Seller of any such CAISO Charges or CAISO Sanctions, including any documentation provided by CAISO with respect to the foregoing.

(b) After Initial Operation.

(i) Commencing upon Initial Operation and continuing throughout the Term, Seller shall have no responsibility for CAISO Charges, CAISO Sanctions or SCE Penalties (except as set forth in Section 3.21(b)(ii)) attributable to or assessed for energy delivered by Seller to SCE.

(ii) In the event Seller fails to comply with the Forecasting provisions set forth in Exhibit D, Seller may be liable to pay a SCE Penalty, CAISO Charge or CAISO Sanction as set forth in Exhibit Q. SCE shall promptly provide Notice to Seller of any SCE Penalties, CAISO Charges or CAISO Sanctions, including any documentation provided by CAISO with respect to the foregoing.

(c) Seller shall make payments for CAISO Charges, CAISO Sanctions and any SCE Penalty in accordance with and solely to the extent Seller is obligated to make such payments under Section 3.21(a) and (b) and Exhibit Q.

(d) If Seller disputes any CAISO Charge, CAISO Sanction or SCE Penalty, Seller shall provide Notice to SCE of such dispute within five (5) Business Days of becoming aware of such CAISO Charge, CAISO Sanction or SCE Penalty. If SCE and Seller cannot agree as to the extent or propriety of, or the

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responsibility for, any CAISO Charge, CAISO Sanction or SCE Penalty in a timely manner, the dispute shall be resolved in accordance with Article 12 of this Agreement.

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

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

3.23 Seller's Provision of Historic Solar Data.

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

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

- (b) Data Parameters.

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

- (i) Direct normal insolation;
- (ii) Total global radiation;
- (iii) Wind direction;
- (iv) Wind speed;

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- (v) Air temperature;
 - (vi) Barometric pressure;
 - (vii) Relative humidity;
 - (viii) Elevation of the station; and
 - (ix) Latitude and longitude of the station.
- (c) Format of Data.

Seller shall provide the data:

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

3.24 Application of Prevailing Wage.

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

3.25 NERC Electric System Reliability Standards.

- (a) During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as consented to by SCE, which consent shall not be unreasonably withheld; *provided* that SCE shall furnish to Seller in writing an explanation of the basis for of any objection) must be registered with NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that SCE, in its capacity as Scheduling Coordinator, is required to perform under this Agreement, if Seller is required to be a registered entity pursuant to the NERC Reliability Standards.
- (b) Notwithstanding anything to the contrary set forth in this Section 3.25, each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes

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and procedures required by NERC, WECC, or the CAISO in order to comply with the NERC Reliability Standards.

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

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ARTICLE FOUR. SCE'S OBLIGATIONS

4.01 Obligation to Pay.

- (a) For Seller's *full* compensation under this Agreement, SCE shall forward to Seller any CAISO Revenues and assess against Seller any CAISO Charges incurred during the Startup Period and shall make monthly Energy Payments to Seller during the Term calculated in the manner described in Section 4.02 and Exhibit Q.
- (b) SCE shall not be obligated to purchase from Seller any Product prior to the commencement of the Term or any electric energy that is not or cannot be delivered as a result of any circumstance, including:
 - (i) An outage of the Generating Facility;
 - (ii) A Force Majeure under Article Five;
 - (iii) A reduction or curtailment of deliveries ordered by the CAISO; or
 - (iv) A reduction or curtailment of deliveries pursuant to the terms of an agreement with a Transmission Provider.

4.02 Payments and Adjustments.

(a) Payment Calculations for Startup Period.

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

(b) Energy Payment Calculations during the Term.

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

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Monthly Energy Payments for the RPS Eligible fraction of the Product shall equal the sum of the TOD Period Energy Payments for all TOD Periods in the month. Each TOD Period Energy Payment shall be calculated pursuant to the following formula, where “n” is the TOD Period being calculated:

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

Where:

- A = Energy Price for RPS-Eligible Product specified in Section 1.06 in \$/kWh (i.e., \$/MWh/1000).
- B = Energy Payment Allocation Factor, set forth in Exhibit K, for the TOD Period being calculated.
- C = The sum of Metered Amounts attributable to the RPS Eligible fraction of the Product in all Settlement Intervals for the TOD Period being calculated in kWh.

The TOD Period Energy Payment shall be calculated with respect to all RPS Eligible Product. Energy Payments for Non-RPS Eligible Product shall be calculated in accordance with Section 4.02(c) and Exhibit E.

If the CAISO Approved Meter does not measure, or is not compensated to measure, the Energy at the Delivery Point, SCE will apply a line loss factor or transformation loss factor to adjust the Metered Amounts in the above formula.

(c) RPS Eligible vs. Non-RPS Eligible Product.

The Generating Facility will be assumed to be operating as a “de minimus” fossil fuel facility, and all of the Product shall be considered RPS Eligible Product, except as provided in subsections (i), (ii) and (iii), below.

- (i) For any calendar year in which Seller elected, and the rules, regulations and procedures of both the CEC and WREGIS allowed, the Generating Facility to operate as a “de minimus” fossil fuel facility, but for which the Generating Facility exceeded the “de minimus” use of fossil fuel, as subsequently determined by either (x) an audit by the CEC, WREGIS or SCE (provided that SCE shall use commercially reasonable efforts to promptly notify Seller of an SCE audit, unless

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prohibited by Applicable Laws), or associated with the annual registration of the Generating Facility with WREGIS using the Renewable/Non-Renewable Fuel Use Methodology under Section 3.11(b)(vii)(1) or (y) the methodology approved as a “Multi-Fuel Generating Unit,” as applicable, then within thirty (30) days (A) after the completion of the audit process with the CEC or WREGIS in the case of clause (x) or (B) after the end of the relevant calendar year in the case of clause (y), Seller shall submit by Notice to SCE a calculation (with reasonable supporting documentation) of the impact on the amount of all Energy Payments paid by SCE to Seller for the relevant time period, using the quantity of Product produced using non-renewable fuel determined as provided in Exhibit E to determine the quantity of Non-RPS Eligible Product for each applicable Settlement Interval and the Energy Price for Non-RPS Eligible Product. Such calculation shall be specifically designed to identify the difference between: (i) amounts paid by SCE to Seller during each Settlement Interval for the RPS-Eligible Product that was re-classified owing to clause (x) or (y) above as Non-RPS Eligible Product during the relevant time period, and (ii) amounts to be paid by SCE for the Non-RPS Eligible Product at the lower of the Energy Price for Non-RPS Eligible Product or the Energy Price for RPS Eligible Product. In addition, Seller shall submit by Notice to SCE a calculation of the Non-RPS Eligible Product Damages Payment in accordance with Exhibit T, if any, for the relevant period. Within sixty (60) days after receipt of Seller’s calculations, SCE shall advise Seller in writing whether it agrees or disagrees with Seller’s calculations. To the extent that SCE agrees with Seller’s calculations, Seller shall pay any agreed-upon amounts owing to SCE within twenty (20) days after receipt of SCE’s Notice. To the extent that SCE disagrees with Seller’s calculations, Seller shall make payment on the non-disputed portion, and the Parties shall attempt to resolve any disputed amounts through negotiations; if the Parties are unable to resolve such dispute, such dispute may be submitted for resolution through mediation and arbitration as provided in Article Twelve.

- (ii) For any calendar year for which Seller elects, or for which the rules, regulations and procedures of either the CEC or WREGIS requires, the Generating Facility to operate for that calendar year as a non-de minimus “Multi-Fuel Generating Unit” facility, Seller shall submit a Notice to SCE, no later than 30 days prior to the commencement of

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that calendar year if due to Seller's election, or, if Seller is informed by either the CEC or WREGIS of such requirement, no later than 30 days after the CEC or WREGIS provides notice of such requirement. For each month in each such calendar year, Seller shall submit by Notice to SCE, within five (5) Business Days after the end of the month, a calculation, in accordance with the provisions of Exhibit E, determining the quantity of Non-RPS Eligible Product for each applicable Settlement Interval in each month, determined using the formula provided in Exhibit E for calculating the quantity of Product produced using non-renewable fuel. SCE shall use such calculation and apply the lower of the Energy Price for Non-RPS Eligible Product or the Energy Price for RPS Eligible Product for the applicable Settlement Intervals. In each monthly Energy Payment, SCE shall pay the Energy Price for RPS Eligible Product for all Product that is not paid at the Energy Price for Non-RPS Eligible Product. To the extent that SCE disagrees with Seller's calculation of the application of Exhibit E, SCE shall make payment of the undisputed portion, and shall pay the lesser of the Energy Price for the Non-RPS Eligible Product and the Energy Price for the RPS Eligible Product on the disputed portion, and the Parties shall attempt to resolve such dispute through negotiations. If the Parties are unable to resolve such dispute, such dispute may be submitted for resolution through mediation and arbitration as provided in Article Twelve.

- (iii) For any calendar year for which Seller elected, or for which the rules, regulations and procedures of either the CEC or WREGIS required, the Generating Facility to operate for that calendar year as a non-de minimus "Multi-Fuel Generating Unit" facility, within thirty (30) days after the end of the relevant calendar year, Seller shall submit by Notice to SCE a calculation of the Non-RPS Eligible Product Damages Payment in accordance with Exhibit T, if any, for the relevant period. Within thirty (30) days after receipt of Seller's calculation, SCE shall advise Seller in writing whether it agrees or disagrees with Seller's calculation. To the extent that SCE agrees with Seller's calculation, Seller shall pay any agreed-upon amounts owing to SCE within sixty (60) days after receipt of SCE's Notice. To the extent that SCE disagrees with Seller's calculation, SCE shall make payment of the undisputed portion, and the Parties shall attempt to resolve such dispute through negotiations. If the Parties are unable to resolve such dispute, such dispute may be submitted for resolution through

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mediation and arbitration as provided in Article Twelve.

- (iv) Notwithstanding the provisions of clauses (ii) and (iii) above, if, after the end of a calendar year in which the Generating Facility has operated as a non-de minimus “Multi-Fuel Generating Unit” facility, the Generating Facility has not exceeded the de minimus use of fossil fuel under the CEC or WREGIS rules, regulations and procedures, no later than thirty (30) days after the end of such calendar year Seller shall submit by Notice to SCE a calculation (with reasonable supporting documentation) of the impact on the amount of all Energy Payments paid by SCE to Seller for the relevant time period, identifying the amount owing to Seller for the difference between the Energy Price for Non-RPS Eligible Product paid by SCE for the relevant megawatt hours and the amount payable for those megawatt hours at the Energy Price for RPS Eligible Product due to their recharacterization as RPS Eligible Product. Within thirty (30) days after receipt of Seller’s calculation, SCE shall advise Seller in writing whether it agrees or disagrees with Seller’s calculation. If SCE agrees with Seller’s calculation, SCE shall pay all amounts owing to Seller within sixty (60) days after receipt of SCE’s Notice. To the extent that SCE disagrees with Seller’s calculation, SCE shall make payment on the undisputed amounts owing within sixty (60) days after receipt of SCE’s Notice, and the Parties shall attempt to resolve such dispute through negotiations. If the Parties are unable to resolve such dispute, such dispute may be submitted for resolution through mediation and arbitration as provided in Article Twelve.
- (v) Payment by Seller of any Non-RPS Eligible Product Damages Payment in accordance with this Section 4.02(c) and Exhibit T shall not relieve Seller of its obligation to pay any Energy Replacement Damage Amount under Section 3.05 and Exhibit F.

4.03 Payment Statement and Payment.

- (a) After Initial Synchronization, Seller shall provide to SCE a calculation and breakdown of the RPS Eligible and Non-RPS Eligible Product in accordance with the time period set forth in Section 4.02(c)(ii). After Initial Synchronization, no later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if

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such 30th day (or 28th or 29th day for February) is a weekend day or holiday during which:

- (i) Seller is delivering test energy during the Startup Period;
- (ii) Metered Amounts are provided to SCE;
- (iii) CAISO Charges, CAISO Sanctions or any SCE Penalties are incurred that affect payments in accordance with Section 3.21 and Exhibit Q; or
- (iv) Adjustments for payment errors are made as set forth below;

SCE shall do each of the following:

- (v) Send a statement to Seller showing:
 - (1) The sum of the CAISO Charges and CAISO Revenues that are directly assigned by the CAISO to the CAISO Global Resource ID(s) for the Generating Facility for test energy delivered to the real-time market during the Startup Period, which will be available approximately one hundred twenty (120) days following the date of the relevant initial settlement statement or thirty (30) days after the CAISO final settlement statement is available to SCE for such deliveries, whichever is sooner;
 - (2) The Metered Amounts for each TOD Period during the month for which the payment is being made (including a breakdown of the amounts of RPS Eligible Product and Non-RPS Eligible Product);
 - (3) A calculation of the amount payable to Seller for the month pursuant to Section 4.02;
 - (4) The CAISO Charges, CAISO Sanctions and SCE Penalties pursuant to Exhibit Q, which will be available approximately one hundred twenty (120) days following the date of the relevant initial settlement statement or thirty (30) days after the CAISO final settlement statement is available to SCE for such deliveries, whichever is sooner; and
 - (5) A calculation of the net amount due Seller.

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- (vi) Send to Seller, via wire transfer, SCE's payment of said net amount, plus, if such payment is late, a Simple Interest Payment calculated using the Interest Rate and the number of days that such payment is late.
- (b) In the event SCE determines that:
 - (i) The CAISO has recalculated CAISO Charges (for which Seller is responsible under Section 3.21 and Exhibit Q) or CAISO Revenues for test energy delivered to the real-time market during the Startup Period; or
 - (ii) A calculation of Metered Amounts, CAISO Charges, CAISO Sanctions or SCE Penalties (for which Seller is responsible under Section 3.21 and Exhibit Q) is incorrect as a result of inaccurate meters, the correction of data by the CAISO in OMAR, or a recalculation of CAISO Charges or CAISO Sanctions (for which Seller is responsible under Section 3.21 and Exhibit Q) by the CAISO,

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

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

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

SCE may make payment adjustments arising from a recalculation of CAISO Charges, CAISO Sanctions or SCE Penalties or as a result of inaccurate meters after the end of the Term, *provided that* the Parties shall be deemed to have waived any such payment adjustments which are not communicated as

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provided in this Section 4.03(b) within twenty-eight (28) months from the end of the Term.

Adjustment payments for meter inaccuracy shall not bear interest.

(c) Netting Rights.

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

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

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

(d) Waiver.

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

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

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

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

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

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

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

4.04 Scheduling Coordinator.

Commencing upon Initial Synchronization and subject to Seller taking the actions required in Section 3.12 to authorize SCE as the Scheduling Coordinator, SCE shall act as Scheduling Coordinator, on behalf of Seller, and shall submit bids and Schedules to the CAISO in accordance with CAISO Tariff protocols.

(a) Duties as Scheduling Coordinator.

- (i) SCE shall comply with all requirements applicable to SCE as the Scheduling Coordinator under the CAISO Tariff.
- (ii) SCE shall submit all notices and updates required under the CAISO Tariff regarding the Generating Facility's status to the CAISO, including reporting of all outages, forced or planned, and "Resource Data Template/Masterfile" information that represents the Generating Facility's operating characteristics.

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- (iii) SCE shall forward to Seller all CAISO Revenues.
 - (iv) In the event SCE believes that any CAISO Charge, CAISO Revenue or CAISO Sanction (for which Seller is responsible under Section 3.21 and Exhibit Q) is incorrect and disputable under the CAISO Tariff (with respect to which SCE shall promptly provide Notice to Seller containing information of its dispute, so long as the dispute pertains to Seller or the Generating Facility) or upon Notice by Seller of any dispute of a CAISO Charge, CAISO Revenue or CAISO Sanction (for which Seller is responsible under Section 3.21 and Exhibit Q), SCE shall dispute any such CAISO Charge, CAISO Revenue or CAISO Sanction in accordance with the procedures set forth under the CAISO Tariff.
- (b) Termination of Scheduling Coordinator.

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

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

SCE shall cooperate with and assist in Seller's efforts, if any, to obtain a replacement Scheduling Coordinator for the Generating Facility.

4.05 CAISO Charges.

- (a) Except as set forth in Section 3.21 and Exhibit Q, SCE shall be responsible for all CAISO Charges and CAISO Sanctions during the Term.
- (b) To the extent that SCE requires Seller to participate in the PIRP program, SCE shall be responsible for PIRP forecasting fees.

4.06 Interest Payments on Cash Deposits.

- (a) SCE shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the:
 - (i) Development Security; and

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- (ii) Performance Assurance.
- (b) Upon receipt of a monthly invoice (provided by Seller to the SCE Manager of Credit and Collateral as set forth in Exhibit C) that sets forth the calculation of the Simple Interest Payment amount due, SCE shall make payment thereof by the third (3rd) Local Business Day of the first month after the last month to which the invoice relates so long as such date is after the day on which such invoice is received; *provided that*,
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, SCE shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
 - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
 - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

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

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ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure.

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

5.02 Requirements Applicable to the Claiming Party.

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

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

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

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

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

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

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

When the Claiming Party is able to resume performance of its obligations under this

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Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Startup Deadline Extension.

If Force Majeure occurs prior to the Startup Deadline which prevents Seller from achieving the Startup Deadline, *then* the Startup Deadline shall, subject to Section 1.03 and Seller's compliance with its obligations as the Claiming Party under Section 5.02, be extended on a day-for-day basis for the duration of the Force Majeure.

5.04 Firm Operation Date Extension.

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

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

5.05 Termination.

Either Party may terminate this Agreement on Notice, which shall be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially and adversely affects the operations of such Party and extends for more than three hundred sixty-five (365) consecutive days ("One-Year Force Majeure Period"); *provided* that at least one hundred twenty (120) days before the expiration of the One-Year Force Majeure Period, the Claiming Party may present to the other Party a plan to remedy and terminate the Force Majeure event (i) within a reasonable period of time determined and certified by the Independent Engineer if the Claiming Party is required to procure long lead-time equipment (such as transformers, boilers or turbine/generator sets) in order to remedy and terminate the Force Majeure event or (ii) in any other case, by no later than six (6) months from the expiration of the One-Year Force Majeure Period (the "Force Majeure Plan"). The Force Majeure Plan will set forth in detail the actions to be taken by the Claiming Party to terminate the Force Majeure event within the above-mentioned timeframe and may include any other relevant assessments and reports prepared by or for the benefit of the Claiming Party. The non-Claiming Party shall have a period of thirty (30) days to review and approve the Force Majeure Plan, such approval or disapproval to be based on the reasonable judgment (provided that with respect to any determination of the Independent Engineer, the determination of the Independent Engineer shall be

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deemed to be reasonable) of the non-Claiming Party.

If the non-Claiming Party approves the Force Majeure Plan, then neither Party shall have the right to terminate this Agreement under this Section 5.05 unless the Claiming Party fails to remedy and terminate the Force Majeure event within the time period specified in the Force Majeure Plan.

If the non-Claiming Party does not approve the Force Majeure Plan, then the Parties shall enter into negotiations for a period of sixty (60) days in which they will endeavor in good faith to agree upon a Force Majeure Plan. During such period, the Claiming Party shall provide any additional documents or reports reasonably requested by the other Party. If the non-Claiming Party approves of, in the exercise of its reasonable judgment, any subsequent Force Majeure Plan, then neither Party shall have the right to terminate this Agreement under this Section 5.05 unless the Claiming Party fails to remedy and terminate the Force Majeure event within the time period specified in the subsequent Force Majeure Plan.

If the Parties are unable to agree upon a Force Majeure Plan, then either Party may terminate this Agreement in accordance with the first paragraph of this Section 5.05.

*** End of ARTICLE FIVE ***

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

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

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

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- terms of this Agreement) and such failure is not cured within five (5) Business Days after Notice of such failure;
- (iv) The failure of such Party to satisfy the creditworthiness and collateral requirements in Article Eight and such failure is not cured within (A) three (3) Business Days with respect to Section 8.02, 8.03 8.04, or 8.05(b)-8.05(h) after Notice of such failure; or (B) ten (10) Business Days with respect to Section 8.01, or 8.05(a) after Notice of such failure.
 - (v) A Party becomes Bankrupt; or
 - (vi) Except for a Sale-Leaseback Transaction entered into by Seller no later than the date that is three months after the Initial Operation Date, a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (b) With respect to Seller's Guarantor, if applicable (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) If any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within five (5) Business Days after Notice;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure is not remedied within three (3) Business Days after Notice;
 - (iii) A Guarantor fails to satisfy the creditworthiness requirements in Section 8.02(c) and such failure is not cured within three (3) Business Days after Notice of such failure;
 - (iv) A Guarantor becomes Bankrupt;

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- (v) The failure of a Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms);
 - (vi) A Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement;
 - (vii) The occurrence and continuation of a default, event of default or other similar condition or event with respect to Guarantor under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or
 - (viii) The occurrence and continuation of a default in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount;
- (c) With respect to Seller:
- (i) Seller fails to post and maintain the Development Security pursuant to Section 3.04(b), and such failure is not cured within five (5) Business Days after Notice of such failure;
 - (ii) Seller does not own the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.07(a);
 - (iii) Seller has not cured a failure with respect to Section 3.07(a) within the earlier of (a) thirty (30) days after the occurrence of an event which results in such failure and which results in a material adverse change in Seller's ability to own or operate the Generating Facility on the Site, (b) thirty (30) days after providing the Notice in accordance with Section 3.07(b) or (c) ninety (90) days after the occurrence of the event which results in such failure but which does not result in a material adverse change in Seller's ability to own or operate the Generating Facility on the Site;
 - (iv) Without the prior written consent of SCE, BrightSource Energy, Inc. (or a wholly-owned subsidiary of BrightSource Energy, Inc.) is not the person or entity as required in Section 3.07(d) and such failure has not

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- been cured within thirty (30) days after Notice of such failure;
- (v) The sum of Metered Amounts plus Lost Output in any consecutive six (6) month period is not at least 10 percent (10%) of the Expected Annual Net Energy Production set forth in Section 1.01(g), and Seller fails to demonstrate to SCE's reasonable satisfaction, within ten (10) Business Days after Notice from SCE, a legitimate reason for such failure;
 - (vi) The annual delivery of Non-RPS Eligible Product in any calendar year from the Generating Facility, as certified by the CEC or WREGIS, is greater than 15 percentage points above the de minimis amount of energy from non-renewable sources allowed by the CEC for the Generating Facility's entire electrical output to be considered RPS Eligible pursuant to the eligibility rules, regulations or guidelines issued pursuant to the RPS Legislation, as may be amended from time to time (for example, if the de minimis amount of energy from non-renewable sources permitted under applicable CEC rules is 2%, the Event of Default would occur if 17% of the Generating Facility's output were produced from non-renewable sources)
 - (vii) Seller intentionally or knowingly Forecasts or delivers, or attempts to Forecast or deliver, at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
 - (viii) Except as permitted under Section 3.04(g), Seller installs Generating Facility Capacity in excess of one hundred eight percent (108%) of the Contract Capacity, and such Generating Facility Capacity is not removed within five (5) Business Days after Notice from SCE;
 - (ix) Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and such equipment is not returned within five (5) Business Days after Notice from SCE;
 - (x) The Generating Facility consists of an ERR type(s) different than that specified in Section 1.01(e);
 - (xi) Subject to Section 3.18, the Generating Facility fails to qualify as an ERR;

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- (xii) Subject to Section 3.18, any electric energy from the Generating Facility and sold or to be sold to SCE hereunder fails to qualify as eligible renewable energy for purposes of the RPS Legislation, except that Non-RPS Eligible electric energy may be sold to SCE hereunder to the extent approved by, and subject to, the conditions imposed by the CEC and WREGIS;
- (xiii) Seller fails to achieve Initial Operation within the timeframes set forth in Section 2.03 and such failure is not cured within five (5) Business Days after Notice from SCE;
- (xiv) A termination of, or cessation of service under, any agreement necessary for:
 - (1) Interconnection of the Generating Facility to the Transmission Provider's electric system;
 - (2) Transmission of the electric energy on the Transmission Provider's System; or
 - (3) Metering of the Metered Amountsand such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;
- (xv) Seller defaults under any Security Document and such default is not cured within the applicable cure period, if any, set forth in such Security Document, or Seller repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any of the Security Documents;
- (xvi) Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits for SCE's sole benefit as specified in Section 3.01;
- (xvii) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money in excess of \$5,000,000, which results in such indebtedness becoming, or

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- becoming capable at such time of being declared, immediately due and payable;
- (xviii) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than (1) Lender; or (2) as permitted under Section 10.04;
 - (xix) The termination or withdrawal of any agreement, certification and approval required in order for the Generating Facility to comply with the CAISO Tariff due to the acts or omissions of Seller and has not been reinstated or replaced within five (5) days after the date that such agreement, certification and approval as noted above has been withdrawn or terminated;
 - (xx) Due to the acts or omissions of Seller during the Term, the Participating Generator Agreement or Meter Service Agreement is terminated and such agreement is not replaced or alternative arrangements reasonably satisfactory to SCE are not made within five (5) days after the date that such agreement is terminated;
 - (xxi) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Exhibit P, if applicable; or
 - (xxii) Prior to the Initial Operation Date, Seller transfers or assigns the CAISO Queue Position except as permitted under the first paragraph of Section 2.02(b).

6.02 Early Termination.

- (a) If an Event of Default shall have occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Consent Agreement agreed upon by SCE, Seller, Lenders and/or Equity Investors in accordance with Section 10.05.
- (b) The Party taking the default (the “Non-Defaulting Party”) shall have the right:
 - (i) To designate by Notice, a day, no later than twenty (20) calendar days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);
 - (ii) To immediately suspend performance under this Agreement; and

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

6.03 Termination Payment.

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

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

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

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

*** End of ARTICLE SIX ***

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ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED (INCLUDING SCE'S RETENTION OF THE FULL AMOUNT OF DEVELOPMENT SECURITY AND THE RECEIPT OF ANY DAILY DELAY LIQUIDATED DAMAGES UNDER SECTION 3.04(c), SELLER'S PAYMENT OF ANY ENERGY REPLACEMENT DAMAGE AMOUNT UNDER SECTION 3.05, THE PAYMENT OF ANY TERMINATION PAYMENT (INCLUDING THE FORWARD SETTLEMENT AMOUNT) UNDER SECTION 6.03 AND AS DESCRIBED IN THE LAST PARAGRAPH OF SECTION 10.16), SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR SUCH BREACH, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR SUCH BREACH ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

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

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

UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF SECTION 10.03 (INDEMNITY), NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS

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

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

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

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

*** End of ARTICLE SEVEN ***

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ARTICLE EIGHT. CREDIT AND COLLATERAL REQUIREMENTS

8.01 Financial Information.

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

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- (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing party diligently pursues the preparation, certification and delivery of the statements.

8.02 Performance Assurance.

(a) Posting Performance Assurance.

On or before the commencement of the Term, Seller shall post Performance Assurance with SCE.

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

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

- (i) For an uncured Event of Default of Seller or Seller's Guarantor, one year following the Early Termination Date; and
- (ii) For all other circumstances, the later of: (x) one hundred and eighty (180) days following the termination of this Agreement, or (y) until all monetary obligations owed by Seller hereunder have been satisfied, provided that SCE shall, within ninety (90) days following the termination of this Agreement return to Seller fifty percent (50%) of the amount of any Performance Assurance which remains posted (i.e. has not been drawn upon by SCE as authorized hereunder) as of that time.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to SCE, *provided that*, on the commencement of the Term, if Seller has posted the Development Security in the form of cash or a Letter of Credit and SCE has not either returned the Development Security to Seller or given Seller Notice, pursuant to Exhibit L, of its determination regarding the disposition of the Development Security by such date, *then* Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by SCE until three (3) Business Days following the later of Seller's receipt or forfeiture of the

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Development Security or any portion thereof pursuant to Section 3.04 and Exhibit L, after which Seller shall be obligated to post the full Performance Assurance Amount.

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

(b) Letters of Credit.

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

- (i) Each Letter of Credit shall be maintained for the benefit of SCE;
- (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
 - (3) If the bank issuing a Letter of Credit fails to honor SCE's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to SCE within one (1) Business Day after such refusal, or three (3) Business Days after such refusal if SCE's draw request results from Seller's failure to provide alternative Performance Assurance acceptable to SCE where a Letter of Credit is expiring as described in Section 1.C. of Attachment A to Exhibit N.
- (iii) Upon the occurrence of a Letter of Credit Default, Seller shall provide to SCE either a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in each case on or before the first Business Day after the occurrence thereof (or the fifth (5th) Business

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Day after the occurrence thereof if only Section a) in the definition of “Letter of Credit Default” in Exhibit A applies);

- (iv) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then SCE may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

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

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

- (1) Failure to provide or maintain sufficient Performance Assurance; or
 - (2) Any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE; and
- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(c) Guaranty Agreement.

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

- (i) “BBB-” from S&P and “Baa3” from Moody’s, if it is rated by both S&P and Moody’s; or

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- (ii) “BBB-” from S&P or “Baa3” from Moody’s if it is rated by either S&P or Moody’s but not by both.

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

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

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

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller or where SCE is authorized to retain all or a portion of the Development Security pursuant to Section 3.04, SCE may do any one or more of the following:

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

SCE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller shall remain liable for any amounts owing to SCE after such application), subject to SCE’s

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obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.04 Subordinated Security Interests and Mortgage.

- (a) Prior to the commencement of the Term, as security for Seller's obligation to pay any Termination Payment Seller or SCE, as the case may be, shall execute, deliver, file and record, as appropriate, separate agreements, documents, fixture filings, financing statements or instruments (the "Security Documents") under which Seller will grant to SCE, in a form reasonably acceptable to SCE and subject to characterization as real or personal property in SCE's sole discretion, fully perfected security interest(s) and deed of trust in the Generating Facility and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or Operate the Generating Facility, including all Permits (collectively the "Secured Interests"); *provided* that (i) if any of the real property rights of the Generating Facility are located on properties managed by the Bureau of Land Management and (ii) despite the commercially reasonable efforts of the Parties, the Bureau of Land Management is not willing to recognize the Secured Interests of SCE on the real property rights of the Generating Facility, the Parties will negotiate in good faith alternative arrangements for the Secured Interests mutually satisfactory to the Parties.

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

The Secured Interests shall be subordinate in right of payment, priority and remedies only to the interests of Lender (or its assignee or designee) on terms and conditions agreed upon by Lender, Seller and SCE.

The Secured Interests shall not include the pledge, assignment, or other interest in the ownership interest in Seller, except as permitted in Sections 8.05(b) and 8.05(c) below.

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

In addition, Seller agrees to file and expressly grants SCE the right to file or, in the case of a fixture filing record, such Uniform Commercial Code

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financing statements and to take such further action and execute such further instruments as shall reasonably be required by SCE to confirm and continue the validity, priority, and perfection of the Secured Interests.

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

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

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

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

8.05 Credit and Collateral Covenants.

- (a) Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents (in addition to any notices, statements, instruments and other documents which must be executed, delivered, filed or recorded as required under Section 8.04(a) above) as may be necessary or advisable to render fully valid and enforceable under all applicable laws the Security Documents and the rights, liens and priorities of SCE with respect to the Security Interest and the Secured Interests provided for herein and therein.
- (b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral or otherwise to any party other than (i) Lender; or (ii) as permitted under Section 10.04.
- (c) Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt,

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or issue any Disqualified Stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or Disqualified Stock issued, in connection with the funding of the development, construction or operation of the Generating Facility.

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

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

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

- (e) As of the date ninety (90) days after the Initial Operation Date, Seller's Debt to Equity Ratio shall not exceed the amount set forth in Section 1.09.
- (f) Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the development, construction and Operation of the Generating Facility.
- (g) Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
- (h) During a time when there is an uncured Event of Default and Seller is a Defaulting Party (until the resolution of the applicable Event of Default), Seller shall not:
 - (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller; or

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- (ii) Otherwise make any distribution or payment to any Affiliate of Seller;
provided, however, Seller may make distributions in the ordinary course of business and payments (including distributions and payments to parent entities and Affiliates) for the payment of current interest on Seller's Debt, payment of any current lease payments under a permitted Sale-Leaseback Transaction and operation and maintenance expenses related to the Generating Facility.

8.06 Waivers.

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

*** End of ARTICLE EIGHT ***

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

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

9.02 Governmental Charges.

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

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

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

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

9.03 Providing Information to Taxing Authorities.

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

*** End of ARTICLE NINE ***

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

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

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

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

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

10.02 Additional Seller Representations, Warranties and Covenants.

- (a) Seller hereby represents, warrants and covenants to SCE that throughout the Term:
 - (i) Other than a Sale-Leaseback Transaction that occurs no later than three (3) months after the Initial Operation Date, Seller shall own and Operate the Generating Facility;
 - (ii) Seller shall deliver to SCE the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
 - (iii) Seller shall ensure that the rights to all Green Attributes, Capacity Attributes and Resource Adequacy Benefits that Seller has committed to convey to SCE hereunder are conveyed;
 - (iv) Seller shall have, maintain and remain in compliance with all Permits necessary to construct and Operate the Generating Facility and to perform its obligations hereunder; and
 - (v) Seller shall have CEC Certification and Verification and all Permits, interconnection agreements and transmission rights necessary to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.
- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to

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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.

10.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorneys’ fees) for injury or death to persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the gross negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement, or breach of SCE of its obligations under Section 3.17.

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

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

- (b) Each Party shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense incurred by such other Party arising out of or in connection with any breach made by such other Party of its representations and warranties in Sections 10.01 and 10.02.
- (c) The provisions of this Section 10.03 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 10.11, Seller shall, at its own cost, defend, save harmless and indemnify SCE, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or

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nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Seller complied with all of the provisions of Section 10.11.

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

- (e) Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.
- (f) Seller shall defend, save harmless and indemnify SCE against any penalty imposed upon SCE as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.
- (g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations, in accordance with Section 3.25, and will indemnify, defend and hold SCE harmless from and against all liabilities, damages, Claims, losses, costs, attorneys fees (which shall include costs of in-house counsel) or expenses incurred by SCE arising from or relating to NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, person or entity to assess such NERC Standards Non-Compliance Penalties against SCE, to the extent such NERC Standards Non-Compliance Penalties are due to Seller's acts and omissions in performing the Generator Operator Obligations or the Generator Owner Obligations. If Seller fully complies with the Generator Operator Obligations and Generator Owner Obligations, SCE will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses, costs, attorneys fees (which shall include costs of in-house counsel) or expenses incurred by Seller for any NERC Standards Non-Compliance Penalties which are due to SCE's acts or omissions in performing its role as Seller's Scheduling Coordinator during the Term.
- (h) All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

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10.04 Assignment.

- (a) Except as provided in Section 10.04(b) or 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- (b) Any Change of Control of Seller shall require the prior written consent of SCE, which consent shall not be unreasonably withheld; *provided* that a Change of Control shall not require the prior written consent of SCE if the direct or indirect equity interests in Seller is assigned: (i) on or before the Initial Operation Date to an Equity Investor; and (ii) thereafter by an Equity Investor to a Permitted Transferee.

10.05 Consent Agreement .

Subject to the provisions of this Section 10.05, Seller shall have the right to assign this Agreement as collateral for any financing or refinancing (including through a Sale-Leaseback Transaction or Equity Investment) of the Generating Facility.

In connection with any financing or refinancing of the Generating Facility (including through a Sale-Leaseback Transaction or Equity Investment) by Seller, including as described in the preceding paragraph, SCE shall in good faith work with Seller and any Financier, to agree upon a consent and agreement in connection with this Agreement (the "Consent Agreement").

The Consent Agreement shall be in form and substance agreed to by SCE, Seller and the Financiers and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by a Financier that are acceptable to SCE):

- (a) SCE shall give to the person(s) to be specified by Financier in the Consent Agreement, simultaneously with the Notice to Seller and prior to exercising its right to terminate this Agreement, written Notice of any event or circumstance known to SCE which would, if not cured within the applicable cure period as specified in Article Six, constitute an Event of Default (an "Incipient Event of Default");
- (b) Financier shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement that apply to Seller.

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

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

- (d) Financier shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Financier sends a written Notice to SCE prior to the end of any cure period indicating Financier's intention to cure. Financier may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period may, in SCE's discretion, be extended by no more than an additional one hundred eighty (180) days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Financier has commenced foreclosure proceedings within sixty (60) days after receipt of such Notice from SCE, and Financier is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Financier or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed one hundred eighty (180) days after Financier's commencement of foreclosure;
- (e) Financier shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default or the end of the

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Term;

- (f) Financier shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;
- (g) In the event Financier, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the entity taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Financier as set forth in the Consent Agreement);

provided that, Financier shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date (but this provision shall not be interpreted to limit SCE's rights to proceed against Seller as a result of an Event of Default) and Financier's (or such entity's) liability to SCE after such assumption shall be limited to its interest in the Generating Facility; *provided, however*, that prior to such assumption, if SCE advises Financier (or such entity) that SCE will require that Financier cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such entity takes title in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Events of Default, then Financier (or such entity) at its option; and in its sole discretion, may elect to either:

- (i) Cause such Incipient Event(s) of Default or Event of Default to be cured, or
 - (ii) Not assume this Agreement;
- (h) If Financier has assumed this Agreement as provided in Section 10.05(g) and elects to sell or transfer the Generating Facility (after Financier directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Financier or an agent of or representative of Financier (excluding any foreclosure sale where a third party other than Financier, Seller, an Affiliate of Financier or an Affiliate of Seller is the buyer *then* Financier must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as

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a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Financier, Seller, an Affiliate of Financier or an Affiliate of Seller). Financier shall be released from all further obligations under this Agreement and all related documents following such assumption.

Such sale or transfer (excluding, however, a foreclosure) may be made only to an entity satisfactory to SCE in its sole discretion; and

- (i) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Financier or its representative or designee, directly or indirectly, takes title to the Generating Facility then, at the request of either SCE or Financier, SCE and Financier (or its designee or representative) shall promptly enter into a new agreement with SCE having substantially the same terms as this Agreement for the term that would have been remaining under this Agreement, provided that Financier's (or its designee's or representative's liability under such new agreement shall be limited to its interest in the Generating Facility and neither Financier (or its designee or representative) nor SCE shall have any personal liability to the other for any amounts owing and neither SCE nor Financier (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

10.06 Abandonment.

Seller shall not relinquish its possession and control of the Generating Facility without the prior written consent of SCE except (i) under circumstances provided for in Section 10.04(b) and (ii) through a Sale-Leaseback Transaction entered into by Seller no later than the date that is three (3) months after the Initial Operation Date.

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

10.07 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF

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CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.08 Notices.

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

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

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

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

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

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

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

10.09 General.

- (a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter.

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

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- (m) SCE has assigned a RAP ID number to this Agreement for tracking purposes only.
- (n) SCE's obligation to take and pay for electric energy produced by the Generating Facility, together with Green Attributes, Resource Adequacy Benefits and Capacity Attributes associated therewith, shall not be affected by any change to or elimination of the RPS Legislation.
- (o) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that SCE and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.
- (p) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

10.10 Confidentiality.

- (a) Terms and Conditions of this Agreement.

Neither Party shall disclose Confidential Information concerning the terms and conditions of this Agreement to a third party, other than:

- (i) In the case of Seller, to BrightSource Energy Inc. (and its directors, officers, employees, counsel, accountants or advisors), and otherwise to each Party's directors, officers, employees, Lenders and Equity Investors (and their respective employees, counsel, accountants or advisors), counsel, accountants, advisors, or investors (and their employees, counsel, accountants or advisors), in each case who have a need to know such information and have agreed to keep such terms confidential; provided that either Party shall have the right to request that the other Party provide a list of persons or entities with whom it

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- has entered into confidentiality agreements;
- (ii) To potential Lenders or Equity Investors, in each case that have a need to know such information and have agreed to keep such terms confidential; provided that either Party shall have the right to request that the other Party provide a list of persons or entities with whom it has entered into confidentiality agreements;
 - (iii) By SCE to SCE's Procurement Review Group, as defined in CPUC Decision 02-08-071, or its successor, subject to any confidentiality agreements or laws, regulations or regulatory decisions concerning confidentiality which are applicable to SCE's Procurement Review Group;
 - (iv) By SCE to the CPUC under seal for purposes of review subject to the disclosing Party ("Disclosing Party") making reasonable efforts to obtain confidentiality protection from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection;
 - (v) To the CAISO or as otherwise may reasonably be required in order to participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electric energy sold or to be sold to SCE hereunder;
 - (vi) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Disclosing Party, other than to those entities set forth in Section 10.10(a)(vii);
 - (vii) In order to comply with any applicable regulation, rule, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any mandatory discovery or data request of a party to any proceeding pending before any of the foregoing;
 - (viii) To any governmental body, the CPUC, the CAISO or any local Control Area or regional authority having jurisdiction in order to support SCE's resource adequacy requirement showings, if applicable; provided that SCE shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable governmental body, CAISO, local Control Area or regional authority to further disclose

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such information;

- (ix) As may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Generating Facility;
- (x) To representatives of a Party's credit ratings agencies:
 - (1) Who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes and have agreed to keep such information confidential; or
 - (2) With respect to the potential impact of this Agreement on the Party's financial reporting obligations;
- (xi) Disclosure of terms specified in and pursuant to Section 10.10(c);
- (xii) In connection with discovery requests or orders pertaining to the non-public terms of this Agreement as referenced in Sections 10.10(a)(vi) and 10.10(a)(vii) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to:
 - (1) Notify the other Party prior to disclosing the confidential information; and
 - (2) Prevent or limit such disclosure.

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

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

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

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

(b) Non-Disclosure Agreement.

(i) The Non-Disclosure Agreement between the Parties attached hereto as Exhibit J is incorporated herein (the “Non-Disclosure Agreement”), and the termination date of that agreement is modified such that it will terminate on the later of:

- (1) The termination of the Non-Disclosure Agreement; or
- (2) One year after the date of termination of this Agreement.

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

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

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

(c) RPS Confidentiality.

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

- (i) Party names;
- (ii) ERR type;

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

10.11 Insurance.

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

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

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

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

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

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

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

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

10.12 Nondedication.

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

10.13 Mobile Sierra.

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

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

10.14 Simple Interest Payments.

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

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number of days between the date due and the date paid.

10.15 Payments.

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

10.16 Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur in the event that certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of the first paragraph of Section 2.02(b) or Section 2.06(b), 3.01, 3.02, 3.04(f), 3.07 or 10.10 of this Agreement in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all claims for monetary damages under this Agreement) to arbitration pursuant to Section 12.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

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

Notwithstanding the other provisions of this Section 10.16, if Seller breaches its obligations pursuant to the first paragraph of Section 2.02(b), SCE shall be permitted to either seek provisional relief under this Section 10.16 or terminate this Agreement and retain any Development Security posted by Seller (in which case the Forward Settlement Amount shall be zero dollars (\$0)) and shall not be permitted to seek both remedies.

10.17 Seller Ownership and Control of Generating Facility.

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

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

10.18 Required Material.

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

*** End of ARTICLE TEN ***

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ARTICLE ELEVEN. CHANGE IN ELECTRIC MARKET DESIGN**11.01 Changes Rendering the Agreement Incapable of Performance.**

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

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

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

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

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

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

Other than requests for provisional relief under Section 10.16, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to mediation under the procedures described in Section 12.02 below, and if the matter is not resolved through mediation, *then* for final and binding arbitration under the procedures described in Section 12.03 below.

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

12.02 Mediation.

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

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

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

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

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

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the

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

12.03 Arbitration.

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

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

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

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

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

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

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

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

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

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

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

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designate a maximum of two (2) rebuttal experts;

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

Subject to Article Seven, the Arbitrator shall have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of the first paragraph of Section 2.02(b), Section 2.06(b), 3.01, 3.02, 3.04(f), 3.07 or 10.10 of this Agreement.

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

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

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

12.04 Waivers.

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

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

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Southern California Edison

Confidential Information

RAP ID# 5208, Solar Partners I, LLC

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

SOLAR PARTNERS I, LLC,
a Delaware limited liability company

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

By:



Thomas P. Doyle

*Senior Vice President,
Project Development*

Date: February 5, 2009

By:



Stuart R. Hemphill

*Vice President,
Renewable and Alternative Power*

Date: 2/6/09

<p>APPROVED STEPHEN E. PICKETT Sr. Vice President and General Counsel</p> <p>By: <u>Stephen E. Pickett</u></p> <p><u>February 6 2009</u>, Attorney</p>
--

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Signatures

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT A
Definitions

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT A *Definitions*

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

1. “Abandonment” means prior to the Initial Operation Date, complete or substantial cessation of any design, development, construction or testing and inspection activities with respect to the Generating Facility for ninety (90) consecutive days by Seller and/or Seller’s contractors, but only if such cessation is not caused by or attributable to an Event of Default of, or request by, SCE, or an event of Force Majeure.
2. “Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

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

3. “Agreement” has the meaning set forth in the Preamble.
4. “Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.
5. “Arbitrator” has the meaning set forth in Article Twelve.
6. “Assets” means the Generating Facility, all equity or other ownership interests in Seller, and any and all real and personal property rights, contractual rights, or other rights that Seller acquires in order to construct and/or Operate the Generating Facility, including Permits.
7. “Bankrupt” means with respect to any entity, such entity:
 - a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and in the case of a involuntary bankruptcy, such petition is not dismissed or stayed within sixty (60) days after filing *provided* that such entity is diligently pursuing such dismissal or stay;

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- b) Makes an assignment or any general arrangement for the benefit of creditors;
 - c) Otherwise becomes bankrupt or insolvent (however evidenced);
 - d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or
 - e) Is generally unable to pay its debts as they fall due.
8. “BLM” means the Bureau of Land Management or its successor.
9. “Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.
10. “Buyer” means Southern California Edison Company.
11. “CAISO” means the California Independent System Operator Corporation or successor entity.
12. “CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy produced by the Generating Facility less Station Use.
13. “CAISO Charges” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
14. “CAISO Declared Over-Generation Condition” means a CAISO declared condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
15. “CAISO Forecasted Over-Generation Condition” means a CAISO forecasted condition on the CAISO Grid where the sum of the desired generation output of all of the Scheduling Coordinators in the Control Area, absent mitigation, would be greater

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- than the system load.
16. “CAISO Global Resource ID” means the number or name assigned by the CAISO to the CAISO Approved Meter.
 17. “CAISO Queue Position” has the meaning set forth in Section 1.01(d).
 18. “CAISO Revenues” means the credits and other payments incurred or received by SCE as a result of test energy from the Generating Facility delivered to the real-time market by Seller during the Startup Period, including costs and revenues associated with CAISO dispatches.
 19. “CAISO Sanctions” means any sanctions directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility, or attributable to, scheduling or deliveries from the Generating Facility under this Agreement.
 20. “CAISO Tariff” means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
 21. “CAISO-Controlled Grid” means the system of transmission lines and associated facilities and entitlements of the participating transmission owners that have been placed under the CAISO’s operational control.
 22. “Calculation Period” means the twenty-four (24) month period immediately preceding the end of a Term Year.
 23. “Capacity Attributes” means any and all current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, howsoever entitled, including any accounting construct counted toward any resource adequacy requirements, attributed to or associated with the Generating Facility or any unit of generating capacity of the Generating Facility during the Term.
 24. “CEC” means the California Energy Commission.
 25. “CEC AFC” means the Application for Certification to be approved by the CEC with respect to the construction, operation and eventual closure of large thermal power plants 50 MW and larger in the State of California under the Warren-Alquist Act (Public Resources Code Section 25000 et seq.).

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26. “CEC Certification and Verification” means certification by the CEC that the Generating Facility is an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility qualifies as generation from an ERR for purposes of the RPS Legislation.
27. “CEC Pre-Certification” means pre-certification (with respect to periods before the Generating Facility has been constructed) by the CEC that the Generating Facility shall be an ERR for purposes of the RPS Legislation and that all electric energy produced by the Generating Facility will qualify as generation from an ERR for purposes of the RPS Legislation.
28. “CFR” means the Code of Federal Regulations, as may be amended from time to time.
29. “Change in CAISO Tariff” means that, other than changes for the MRTU being planned as of the Effective Date, the CAISO Tariff has been changed and such change has a material adverse impact on either Party, or the CAISO has been dissolved or replaced and any successor to the CAISO operates under rules, protocols, procedures or standards that differ in a material respect from the CAISO Tariff, after the Effective Date.
30. “Change of Control” means any direct or indirect assignment, sale or other transfer of more than fifty percent (50%) of the ownership interest of Seller, whether voluntarily or by operation of law.
31. “Check Meter” means the SCE revenue-quality meter section or meter, which SCE may require at its discretion, as set forth in Section 3.06(b).
32. “Claiming Party” has the meaning set forth in Section 5.02.
33. “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
34. “Confidential Information” has the meaning set forth in Section 10.10(b)(ii).
35. “Consent Agreement” has the meaning set forth in Section 10.05.

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36. “Construction Permit Schedule” means Seller’s schedule to file applications for and obtain certain Permits as set forth in Exhibit G-1, including any revisions thereto in accordance with this Agreement. The specification of one or more dates in Exhibit G-1 that are later than the last date to achieve the Trigger Date or be subject to a termination right (as specified in Section 2.04(a)(ii) or otherwise) shall in no manner limit or prevent a Party from exercising such termination right.
37. “Contract Capacity” means the electric energy generating capacity, set forth in Section 1.01(f), that Seller commits to install at the Site, which capacity is determined net of maximum expected Station Use.
38. “Control Area” means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.
39. “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.
40. “CPUC” means the California Public Utilities Commission.
41. “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 this 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 (California 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.

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42. “Credit Rating” means with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligation by either S&P or Moody’s, *then* “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody’s, as the case may be.
43. “Cross Default Amount” means the dollar amount set forth in Section 1.08(c).
44. “Daily Delay Liquidated Damages” has the meaning set forth in Section 3.04(c).
45. “Day-Ahead” has the meaning as set forth in the CAISO Tariff.
46. “Defaulting Party” has the meaning set forth in Section 6.01.
47. “Delivery Network Upgrades” means the additions, modifications, and upgrades to the transmission system at or beyond the Delivery Point, other than Reliability Network Upgrades, identified in the Interconnection Studies as necessary to interconnect the Generating Facility to the transmission system.
48. “Delivery Point” shall be as set forth in Section 1.01(d).
49. “Delivery Term” means Term.
50. “Demonstrated Contract Capacity” has the meaning set forth in Section 3.04(e).
51. “Development Security” has the meaning set forth in Section 3.04.
52. “Direct Assignment Facilities” are the transmission facilities necessary to physically and electrically interconnect a “New Facility Operator” to the “CAISO Controlled Grid” (as each term is defined in the Interconnection Study) at the Interconnection Point.
53. “Disclosing Party” has the meaning set forth in Section 10.10.
54. “Disclosure Order” has the meaning set forth in Section 10.10.
55. “Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party’s performance or failure of performance under this Agreement.

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56. “Disqualified Stock” means any capital stock that, by its terms (or by the terms of any security into which such stock is convertible, or for which such stock is exchangeable, in each case at the option of the holder of the capital stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder of the capital stock, in whole or in part, on or prior to the date that is ninety one (91) days after the expiration of the Term of this Agreement.
57. “Early Termination Date” has the meaning set forth in Section 6.02.
58. “Effective Date” has the meaning set forth in the Preamble.
59. “Emergency” means:
- (a) An actual or imminent condition or situation which jeopardizes the integrity of Transmission Provider’s electric system or the integrity of any other systems to which the Transmission Provider’s electric system is connected, as determined by the Transmission Provider in its reasonable discretion, or any condition so defined and declared by the CAISO; or
 - (b) An emergency condition as defined under an interconnection agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the Transmission Provider’s electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.
60. “Energy Communication Network” means the CAISO infrastructure network (data highway) used by all CAISO participants to exchange data to and from resources and CAISO.
61. “Energy Deviations” means the absolute value of the difference, in kWh, in any Settlement Interval between:
- a) The Final Hour-Ahead Schedule for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and
 - b) Settlement Amounts for the Settlement Interval.
62. “Energy Payment” has the meaning set forth in Section 4.02(b).

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63. “Energy Payment Allocation Factor” has the meaning set forth in Exhibit K.
64. “Energy Price” means the energy price set forth in Section 1.06.
65. “Energy Replacement Damage Amount” has the meaning set forth in Section 3.05(b).
66. “Equitable Defense” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
67. “Equity Investment” means an acquisition of an ownership interest in the form of stock, membership or partnership interest of Seller or the immediate parent of Seller.
68. “Equity Investor” means one or more entities that make an Equity Investment.
69. “ERR” means an Eligible Renewable Energy Resource as such term is defined in California Public Utilities Code Section 399.12 or Section 399.16.
70. “Event of Default” has the meaning set forth in Section 6.01.
71. “Event of Deficient Energy Deliveries” has the meaning set forth in Section 3.05(a)(ii).
72. “Expected Annual Net Energy Production” means the Generating Facility’s expected Metered Amounts set forth in Section 1.01(g).
73. “Extraordinary SCE Force Majeure” means a Force Majeure as to which SCE is the Claiming Party that results in SCE not accepting or Scheduling electric energy for more than ten (10) consecutive days during which Seller was prepared and able to deliver the Delivered Amounts at the Delivery Point.
74. “Federal Funds Effective Rate” means the annual interest rate posted opposite the caption “Federal Funds (effective)” as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
75. “Federal Investment Tax Credit Legislation” means validly enacted federal legislation with respect to the applicability and rate of the investment tax credit (26 U.S.C. § 48) to owners of generating facilities which use solar facilities to produce electric energy which are placed in service on or before the Forecasted Initial Operation Date, or such other date as may be agreed to in a writing signed by both Parties, on terms no

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- less favorable to owners of solar facilities generating electricity than those available with respect to such facilities placed in service on or after January 1, 2008 and before December 31, 2016 pursuant to the law governing Investment Tax Credits as in effect on the Effective Date.
76. “FERC” means the Federal Energy Regulatory Commission.
77. “Final Hour-Ahead Schedule” means the results awarded out of the later of the CAISO IFM or the Hour-Ahead Scheduling Process, as such terms are defined in the CAISO Tariff.
78. “Final Schedule” means the later of the HASP Advisory Schedule or Dispatch Instruction, as such terms are defined in the CAISO Tariff.
79. “Finance Costs” has the meaning set forth in Section 2.04(c)(i).
80. “Financier” means a Lender and/or Equity Investor as the context requires.
81. “Firm Operation Date” has the meaning set forth in Section 1.04.
82. “Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:
- a) In whole or in part:
 - i) Delays a Party’s performance under this Agreement;
 - ii) Causes a Party to be unable to perform its obligations; or
 - iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
 - b) Is not within the control of, or is not the result of the negligence of, that Party; and
 - c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning, volcanic eruptions and emissions and other natural catastrophes or unusual or extreme adverse weather related events, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority, or curtailment or

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reduction in deliveries at the direction of a Transmission Provider or the CAISO (except as set forth below) *provided that*, the basis of such curtailment or reduction is not an event caused by Seller.

Force Majeure does not include:

- d) The lack of wind, sun or other fuel source of an inherently intermittent nature (except as for the lack caused by events set forth in clause (c) above);
 - e) Reductions in generation from the Generating Facility resulting from ordinary wear and tear, deferred maintenance or operator error;
 - f) The lack of economic resources of a Party; or
 - g) Curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider's system or the CAISO Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair.
83. "Force Majeure Plan" has the meaning set forth in Section 5.05.
84. "Forecast" or "Forecasting" means the action of Seller in preparing and submitting to SCE, in accordance with Exhibit D, the Production Forecasts.
85. "Forecasted Initial Operation Date" means the date Seller anticipates, as of the Effective Date, will be the Initial Operation Date.
86. "Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other.

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

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

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

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87. “Full Development Security” has the meaning set forth in Section 3.04.
88. “GAAP” means generally accepted accounting principles.
89. “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

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

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

90. “Generating Facility” means Seller’s solar thermal electric generating facility as more particularly described in Exhibit B, together with all materials, equipment, systems, structures, features and improvements necessary to produce electric energy at such facility, including, without limitation: (a) the solar field and power block; (b) Seller’s interest in any common facilities required for the proper operation of the facility (including, for example, operation and maintenance facilities, control facilities and other shared infrastructure); and (c) Seller’s rights to spare parts inventory required for the operation of the facility in accordance with Prudent Electrical Practices. In no case does the Generating Facility include the Site, land rights or interests in land.
91. “Generating Facility Capacity” means the Generating Facility’s total rated electric alternating current energy generating capacity determined as the nameplate rating of the turbine generator of the Generating Facility, consistent with Prudent Electrical Practices and accepted industry standards, as indicated on the nameplate physically attached to the turbine generator less expected maximum Station Use.

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92. “Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor each Generating Unit.
93. “Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.
94. “Generator Operator” means the Person that operates the Generating Facility and has registered with NERC as the Person responsible for complying with those NERC reliability standards applicable to operator of the Generating Facility.
95. “Generator Operator Obligations” means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards available at http://www.nerc.com/~filez/standards/Reliability_Standards_Regulatory_Approved.html, or any successor thereto.
96. “Generator Owner” means an entity that owns generating units and has registered with NERC as the entity responsible for complying with those NERC reliability standards applicable to owner of generating units as described in the Statement of Compliance Registry Criteria at <http://www.wecc.biz>.
97. “Generator Owner Obligations” means the obligations of a Generator Owner as set forth in the applicable NERC Reliability Standards available at <http://www.wecc.biz>.
98. “Governmental Authority” means:
- a) Any federal, state, local, municipal or other government;
 - b) Any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
 - c) Any court or governmental tribunal.
99. “Governmental Charges” has the meaning as set forth in Section 9.02.
100. “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:

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- (1) Any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do *not* include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction, financing 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.

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- 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.
101. “Guarantor” has the meaning set forth in Section 1.08.
 102. “Guaranty Agreement” means, if a Guarantor has been identified, the guaranty agreement from the Guarantor in the form attached hereto as Exhibit I.
 103. “IFM” or “Integrated Forward Market” has the meaning set forth in the CAISO Tariff.
 104. “Incipient Event of Default” has the meaning set forth in Section 10.05(a).
 105. “Independent Engineer” means any of the entities set forth in Exhibit R or any other reputable third party engineering firm experienced in solar thermal energy projects mutually agreeable to the Parties.
 106. “Initial Operation” means the initial operation of the Generating Facility.
 107. “Initial Operation Date” means the date selected by Seller to begin Forecasting and delivering the Product to SCE.
 108. “Initial Synchronization” means the date upon which the Generating Facility is first synchronized with Seller’s Transmission Provider.
 109. “Insolation” means direct normal radiation from the sun as measured at the Site on a real time basis.
 110. “Interconnection Point” means the location where the Generating Facility first interconnects with the existing electrical transmission or distribution system, as reported on the Generating Facility’s application for interconnection with the Transmission Provider’s electrical system.
 111. “Interconnection Study” means any of the following studies as may be defined in the CAISO’s Tariff or the Transmission Provider’s tariff, as applicable:
 - a) An interconnection feasibility study;

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- b) An interconnection system impact study; or
 - c) An interconnection facilities study.
112. “Interest Rate” means an annual rate equal to:
- a) The rate published in The Wall Street Journal as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus
 - b) Two percentage points (2%);
- provided, however,* that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.
113. “Investment Tax Credit” means investment tax credits under Section 48 of the Internal Revenue Code as in effect from time-to-time during the Term or any successor or other provision providing for a federal tax credit determined by reference to capital investment in equipment used to produce renewable electric energy from solar energy resources for which Seller, as the owner of the Generating Facility, is eligible.
114. “ITC” means Investment Tax Credits.
115. “JAMS” has the meaning set forth in Article Twelve.
116. “kW” means a kilowatt of electric energy generating capacity.
117. “kWh” means a kilowatt-hour of electric energy.
118. “Large Generator Interconnection Agreement” or “LGIA” means the agreement and associated documents between Seller, the Transmission Provider and CAISO governing the terms and conditions of Seller’s interconnection with the Transmission Provider’s transmission lines, including any description of the proposed plan for interconnecting to the Transmission Provider’s transmission lines and all necessary Transmission Upgrades and Network Upgrades, as such terms are defined in the CAISO Tariff, which include Delivery Network Upgrades and Reliability Network Upgrades, as such terms are defined in the CAISO Tariff.
119. “Lease” means one or more agreements whereby Seller leases or otherwise obtains Site Control of the Site(s) described in Section 1.01(b) from a third party, the term of

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- which Lease begins on or before the commencement of the Term and extends at least through the last day of the Term.
120. “Lender” means any third-party institution(s) or entities or successor(s) in interest or assignees that either: (i) purchase(s) the Generating Facility and then lease(s) it to Seller under a Sale-Leaseback Transaction, or (ii) provide(s) development, bridge, construction or permanent debt financing or refinancing for the Generating Facility to Seller or credit support in connection with this Agreement.
121. “Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Exhibit N and acceptable to SCE. All Letter of Credit costs shall be borne by Seller.
122. “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:
- a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s;
 - b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
 - c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
 - d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
 - e) Seller fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before such Letter of Credit expires or terminates; or
 - f) The issuer of such Letter of Credit becomes Bankrupt;
- provided that*, no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.
123. “Local Business Day” means, a Business Day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is

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located and (b) in relation to any notice or other communication, in the location specified in the address for notice provided by the recipient, except for the Friday immediately following the U.S. Thanksgiving holiday or a Federal Reserve Bank holiday.

124. “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

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

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

125. “Lost Output” means the reduction in Metered Amounts over the relevant measurement period that the Generating Facility was available to produce and could reasonably have been expected to deliver, based upon the calculation method set forth in Exhibit M, but was not delivered due to:
- a) Force Majeure;
 - b) Winds exceeding 12 meters/second that cause the Generating Facility to stow the heliostats located at the Site;
 - c) An Event of Default where SCE is the Defaulting Party; or
 - d) A curtailment or reduction of deliveries ordered or caused by the CAISO, or SCE acting as a Transmission Provider (including without limitation a curtailment or reduction that does not constitute a Force Majeure as provided

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in subparagraph (g) of the definition of Force Majeure).

126. “Lost Output Report” means the report of Lost Output in the form of the Lost Output Workbook prepared in accordance with the procedures set forth in Section 3.20 and Exhibit M.
127. “Lost Output Workbook” has the meaning set forth in Exhibit M.
128. “Market Price” means the market price for RPS Eligible Product.
129. “Material Construction Permits” means the Permits set forth in the Construction Permit Schedule (including the CEC AFC if the Site is located in the State of California).
130. “Mediator” has the meaning set forth in Article Twelve.
131. “Meteorological Equipment” means the instruments and equipment that meet those specifications set forth in Exhibit S, as may be modified by SCE from time to time to reflect the CAISO’s PIRP protocol.
132. “Metered Amounts” means the electric energy produced by the Generating Facility and expressed in kWh, as measured by the CAISO Approved Meter.
133. “Meter Service Agreement” has the meaning set forth in the CAISO Tariff.
134. “Milestone Schedule” means Seller’s schedule to develop the Generating Facility as set forth in Exhibit G, including any revisions thereto in accordance with this Agreement.
135. “Moody’s” means Moody’s Investor Services, Inc.
136. “MRTU” means the Market Redesign and Technology Upgrade to be implemented by CAISO.
137. “Multi-Fuel Generating Unit” is a “Multi-Fuel Generating Unit” or its successor, as such term is defined in the operating rules of WREGIS.
138. “MW” means a megawatt (or 1,000 kilowatts) of electric energy generating capacity.
139. “MWh” means a megawatt-hour (or 1,000 kilowatt-hours) of electric energy.
140. “NERC” means the North American Electric Reliability Council, or any successor

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thereto.

141. “NERC Reliability Standards” means the NERC Statement of Compliance Registry Criteria (Revision 4.0), which is, as of the Effective Date, available at http://www.wecc.biz/documents/library/compliance/manuals/Statement_of_Compliance_Registry_Criteria_V4-0.pdf
142. “NERC Standards Non-Compliance Penalties” means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the CAISO, WECC, a Governmental Authority or any entity acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.
143. “Network Upgrades” means the Delivery Network Upgrades and the Reliability Network Upgrades.
144. “Notice” means notices, requests, statements or payments provided in accordance with Section 10.08 and Exhibit C.
145. “Non-Defaulting Party” has the meaning set forth in Section 6.02.
146. “Non-Disclosure Agreement” has the meaning set forth in Section 10.10(b)(i).
147. “Non-RPS Eligible” means electric energy that is not RPS Eligible.
148. “OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data or its successor.
149. “One Year Force Majeure Period” has the meaning set forth in Section 5.05.
150. “Operate,” “Operating” or “Operation” means to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use, management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in accordance with Prudent Electrical Practices.
151. “Option Date” has the meaning set forth in Section 3.04(g).
152. “Outage Schedule” has the meaning set forth in Section 3.14.

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153. “Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.
154. “Participating Intermittent Resource” means an intermittent resource generating facility that is certified, and remains certified, under PIRP as set forth in the CAISO Tariff.
155. “Participating Intermittent Resource Program” or “PIRP” means the CAISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the California CAISO Tariff in Docket No. ER02-922-000 or any successor program that SCE determines accomplishes a similar purpose.
156. “Party” or “Parties” have the meaning set forth in the Preamble.
157. “Performance Assurance” means collateral (in the amount of the Performance Assurance Amount set forth in Section 1.07) for Seller’s performance under this Agreement in the form of either cash, Letter(s) of Credit, or other security acceptable to SCE.
158. “Performance Assurance Amount” means the collateral amount for Performance Assurance set forth in Section 1.07.
159. “Permit Approval” means approval by the relevant regulatory agencies of any Permit and shall be deemed obtained upon the issuance of such Permit, and shall not be invalidated by the pendency of an appeal or other post issuance challenge to the issuance of the Permit.
160. “Performance Tolerance Band” has the meaning set forth in Exhibit Q.
161. “Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, operate, maintain, improve, refurbish and retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to SCE.
162. “Permitted Transferee” means an entity (including an Equity Investor) that has all of the following:
- a) A tangible net worth of not less than \$200,000,000 and a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and
 - b) experience in the ownership of power generation facilities.

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163. “PIRP” means the Participating Intermittent Resource Program.
164. “Product” means:
- a) All electric energy produced by the Generating Facility during the Term, net of Station Use; and
 - b) All Green Attributes, Capacity Attributes, and Resource Adequacy Benefits generated by, associated with or attributable to the Generating Facility during the Term.
165. “Production Forecasts” has the meaning set forth in Exhibit D.
166. “Project” means the Generating Facility.
167. “Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

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

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

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

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- on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the Transmission Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
 - f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States similar to the Generating Facility and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.
168. "Quarterly Statement" has the meaning set forth in Section 3.05(c).
169. "RAP ID" means the contract identification number set forth on the title page to this Agreement.
170. "Reliability Network Upgrades" means the additions, modification, and upgrades to the transmission system at or beyond the Delivery Point identified in the Interconnection Studies as necessary to interconnect the Generating Facility safely and reliably to the transmission system which would not have been necessary but for the interconnection of the Generating Facility, including additions, modifications, and upgrades necessary to remedy short circuit or stability problems resulting from the interconnection of the Generating Facility to the transmission system.
171. "Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.
172. "Renewable/Non-Renewable Fuel Use Methodology" has the meaning set forth in Section 2.02(c)(ii)(3).

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173. “Required Material” means any permit, license, application, certification, design, specification, program, agreement, instrument, equipment, device, mechanism, or any other item in connection with the Generating Facility to be reviewed or approved by SCE or on SCE’s behalf, or requested or required of Seller by SCE or on SCE’s behalf, under this Agreement.
174. “Resource Adequacy Benefits” means the rights and privileges attached to the Generating Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.
175. “Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time during the Term.
176. “Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing.
177. “Restricted Period” has the meaning set forth in Section 2.06(b).
178. “RPS Eligible” means electric energy meeting the eligibility requirements for certifying renewable resources as eligible under the RPS Legislation and the eligibility requirements set forth in guidelines adopted by the CEC pursuant to California Public Resources Code Section 25747.
179. “RPS Legislation” means the State of California Renewables Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.
180. “S&P” means the Standard & Poor’s Rating Group.
181. “Sale-Leaseback Transaction” means a transaction in which Seller (i) sells the Generating Facility to a third party providing lease financing to Seller and (ii) leases the Generating Facility from such third party under an agreement authorizing Seller to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term of this Agreement, subject to the third party lessor’s right to terminate the lease in the event of a default by Seller as set forth in the agreement between Seller and such third party.

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182. “SC Schedules” means the amounts initially submitted to the CAISO by SCE, as Scheduling Coordinator for Seller, of expected electric energy that Seller expects to deliver in each hour.
183. “SCE” has the meaning set forth in the Preamble.
184. “SCE Penalty” means the amount charged to Seller by SCE, in accordance with Exhibit Q, for hours in a calendar month when Seller does not accurately provide energy production information as set forth in Exhibit D.
185. “SCE’s Projected Energy Forecast” has the meaning set forth in Exhibit D.
186. “Schedule,” “Scheduled” or “Scheduling” means the action of SCE in submitting a Bid to the CAISO and receiving the Final Schedules from the CAISO, as such terms are defined in the CAISO Tariff.
187. “Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.
188. “SEC” has the meaning set forth in Section 8.01.
189. “Secured Interest” has the meaning set forth in Section 8.04(a).
190. “Security Documents” has the meaning set forth in Section 8.04(a).
191. “Security Interests” has the meaning set forth in Section 8.03.
192. “Seller” has the meaning set forth in the Preamble.
193. “Seller’s Bankruptcy” means the condition of Seller as Bankrupt.
194. “Seller’s Debt” means, without duplication, each of the following:
 - a) All indebtedness of Seller for borrowed money;
 - b) All obligations of Seller for the deferred purchase price of property or services which purchase price is due more than six months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business);

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- c) All obligations of Seller evidenced by notes, bonds, debentures, Disqualified Stock or other similar instruments;
- d) All obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);
- e) All monetary obligations of Seller under:
 - i) A lease of any property (whether real, personal or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller;
 - ii) A so-called synthetic, off-balance sheet or tax retention lease; or
 - iii) An agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment);
- f) All obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities;
- g) All obligations of Seller with respect to any redeemable equity interests in Seller, including in the case of preferred stock at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends;
- h) All obligations of Seller with respect to any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value;
- i) All indebtedness of others referred to in clauses a) through h) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement:
 - i) To pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness;

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

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

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

195. “Seller’s Debt Percentage” means the quotient, expressed as a percentage, equal to (a) Seller’s Debt divided by (b) Seller’s Debt plus Seller’s Equity.
196. “Seller’s Debt to Equity Ratio” means the ratio of Seller’s Debt Percentage to Seller’s Equity Percentage.
197. “Seller’s Energy Delivery Obligation” has the meaning set forth in Section 3.05(a)(i).
198. “Seller’s Equity” means the aggregate net equity of Seller as set forth on its balance sheet prepared in accordance with GAAP.
199. “Seller’s Equity Percentage” means the quotient, expressed as a percentage, equal to (a) Seller’s Equity divided by (b) Seller’s Debt plus Seller’s Equity.
200. “Seller’s Transmission Consultant” means an independent consultant selected by

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- Seller to analyze the scope of congestion or curtailments that may be experienced by the Generating Facility during the Term, or transmission upgrades that may be required to mitigate congestion or curtailments.
201. “Settlement Amounts” means the Metered Amounts.
202. “Settlement Interval” means any one of the six ten (10) minute time intervals beginning on any hour and ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.).
203. “Simple Interest Payment” means a dollar amount calculated by multiplying the:
- a) Dollar amount on which the Simple Interest Payment is based; times
 - b) Federal Funds Effective Rate or Interest Rate as applicable; times
 - c) The result of dividing the number of days in the calculation period by 360.
204. “Site” means the real property on which the Generating Facility is, or will be located, as further described in Section 1.01(b) and Exhibit B or as adjusted in accordance with Section 3.08.
205. “Site Control” means that Seller shall:
- a) Own the Site;
 - b) Be the lessee of the Site under a Lease;
 - c) Be the holder of one or more right-of-way grants or similar instruments with respect to the Site; or
 - d) Be the managing partner or other person or entity authorized to act in all matters relating to the control and Operation of the Site and the Generating Facility.
206. “Solar Resource Evaluation Report” means a final report concerning the electric energy producing potential of the Site prepared by an independent engineer which assesses the solar resource potential at the Site.
207. “Startup Deadline” means the date set forth in Section 1.03 by which Seller must have achieved Initial Operation as set forth in Section 2.03, subject to extension as

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- provided in this Agreement.
208. “Startup Period” means the period that begins at Initial Synchronization and ends at Initial Operation.
209. “Station Use” means:
- a) The electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation; and
 - b) The electric energy produced by the Generating Facility that is consumed within the Generating Facility’s electric energy distribution system up to the Delivery Point as losses.
210. “Supplemental Lost Output” has the meaning set forth in Section 3.20.
211. “Supplemental Lost Output Report” has the meaning set forth in Section 3.20.
212. “Term” has the meaning set forth in Section 1.05.
213. “Term Year” means a twelve (12) month period beginning on the first day of the calendar month following the Firm Operation Date and each successive twelve (12) month period thereafter.
214. “Termination Payment” means the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.
215. “TOD Period(s)” means the time of delivery period(s) set forth in Exhibit K.
216. “TOD Period Energy Payment” means a portion of an Energy Payment based upon the time of delivery of Product and calculated in accordance with the formula set forth in Section 4.02(b).
217. “Transmission Completion Date” means the date by which (a) Seller has obtained an LGIA so that the Generating Facility may interconnect with the CAISO Grid for the purpose of delivering electric energy to SCE pursuant to this Agreement and (b) the Transmission Provider or other responsible entity has completed all necessary Transmission Upgrades and Reliability Network Upgrades, as such terms are defined

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- in the CAISO Tariff, except those transmission upgrades that are being completed by Seller.
218. “Transmission Provider” means any entity or entities responsible for the interconnection of the Generating Facility with a Control Area or transmitting the Metered Amounts on behalf of Seller from the Generating Facility to the Delivery Point.
219. “Trigger Date” means the date that is the earlier of: (a) the date selected by Seller, in its sole discretion, by Notice to SCE; and (b) the earliest date on which all of the following have occurred: (i) CPUC Approval has been obtained; (ii) all Material Construction Permits have been obtained; (iii) CEC Pre-Certification has been obtained; and (iv) Seller has executed a Large Generator Interconnection Agreement with respect to the Generating Facility. If Seller has not selected a date and provided Notice of same to SCE under clause (a), Seller must provide prompt Notice to SCE when the conditions set forth in clause (b) are achieved.
220. “Unincluded Capacity” has the meaning set forth in Section 3.04(e).
221. “Unreimbursed Costs” has the meaning set forth in Section 2.04(c)(i).
222. “Unrelated Interconnection Withdrawal” has the meaning set forth in Section 2.04(b)(i).
223. “WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.
224. “Web Client” means a web-based system approved by SCE.
225. “WREGIS” has the meaning set forth in Section 3.01(d)(iv).

*** End of EXHIBIT A ***

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EXHIBIT B

Generating Facility and Site Description

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EXHIBIT B

Generating Facility And Site Description

1. Generating Facility Description.

(a) General

The proposed project uses solar concentrating thermal power plants, based on BrightSource’s LPT (Luz Power Tower) and heliostat mirror technology. In each phase of the project, a Rankine cycle reheat steam turbine receives live steam from a Solar Steam Boiler consisting of a steam generator and a solar superheater and reheated steam from a solar reheater (see Figure 1). The Solar Steam Boiler is installed at the top of a Power Tower inside the Power Block, which is located in the center of a heliostat solar field. The solar field and power generation equipment are started up each morning after sunrise and insolation build-up, and shut down in the evening when insolation drops below the level required keeping the turbine on line.

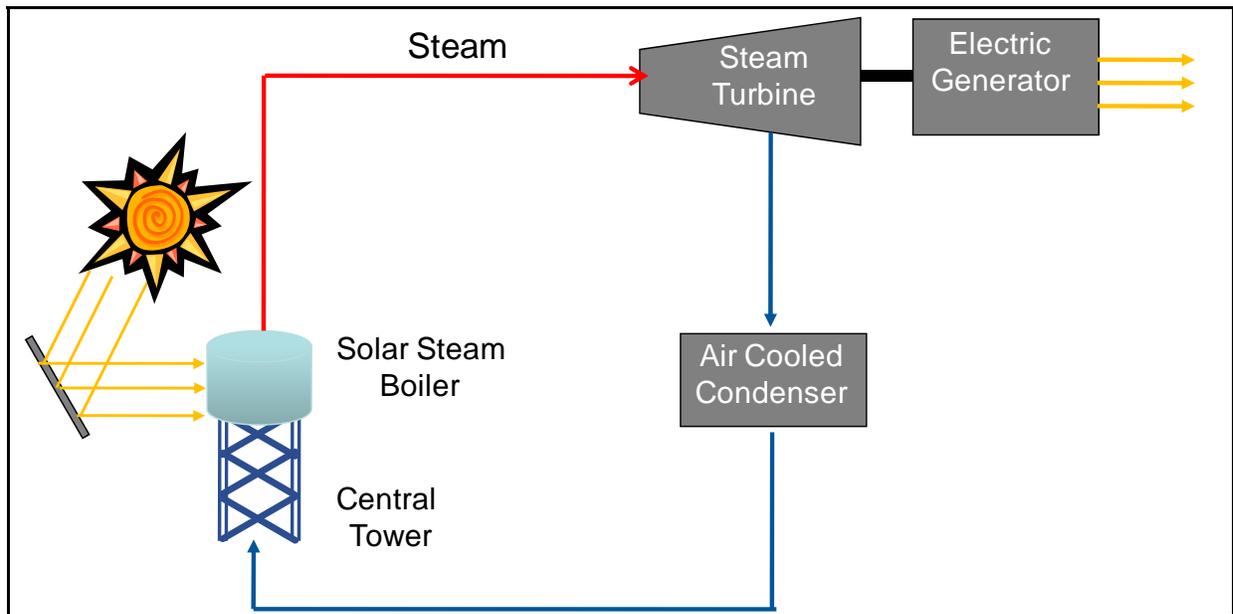


Figure 1: Overview of Solar Thermal Power Plant

(b) Technology

(i) General

BrightSource’s LPT technology is based upon a central tower, on top of which a Solar

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Steam Boiler Receiver (SSBR) is erected. The tower is surrounded by thousands of heliostats, each consisting primarily of two flat mirrors (along with support structures) and a tracking system mounted on a single pylon that is implanted in the ground. Each heliostat tracks the sun individually in two axes and sends a beam of light to the SSBR. The SSBR then converts the large amount of solar energy collected from the total surface of the heliostats into heat in the form of steam, which is used to power a steam turbine generator.

Pictured below is BrightSource's Solar Energy Development Center (SEDC), located in Israel's Negev Desert, in operation. This 6MWth plant utilizes BrightSource's LPT Technology. The heliostats at SEDC are LH-1 design (single mirror per heliostat), whereas those currently intended to be used will be the LH-2 design (two mirrors per heliostat).

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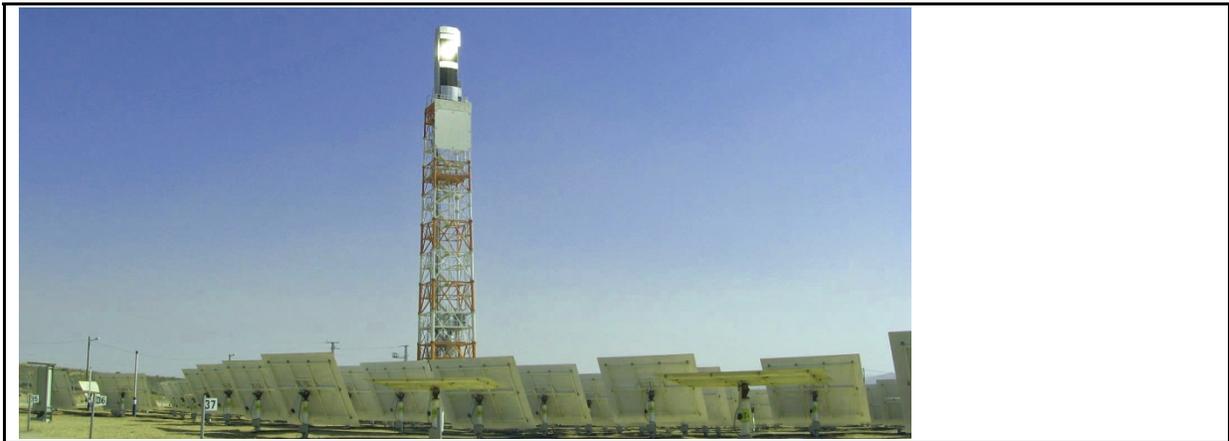


Figure 2: BrightSource's Solar Energy Development Center

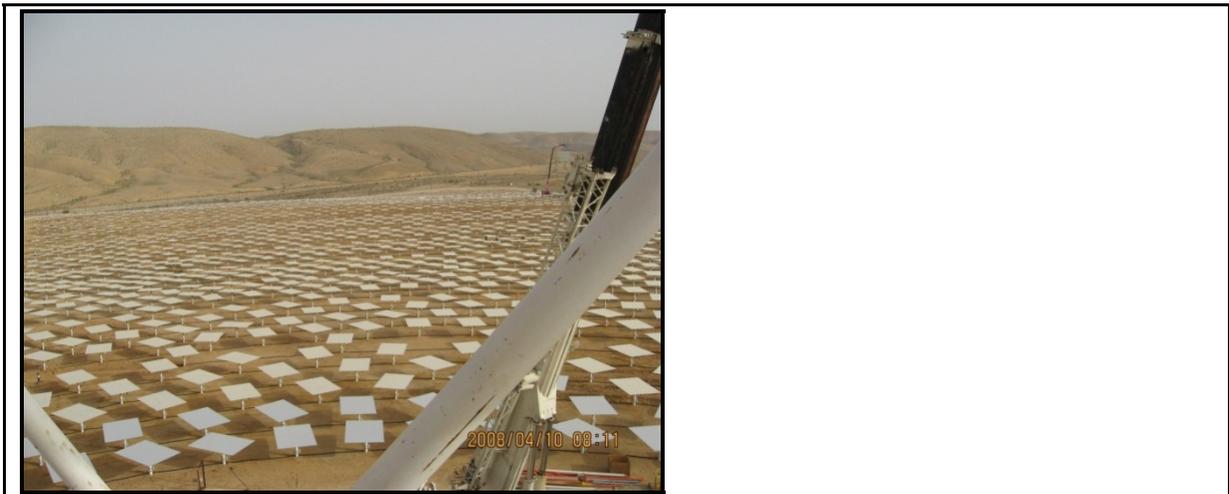


Figure 3: View from the Tower at the SECD with heliostats in stowed position

(ii) Solar Field

The solar field contains approximately 45,000 heliostats per 100 MW, arranged around the central power tower. The total reflective surface per 100 MW of the solar field is approximately 650,000 m². The solar field is controlled by the Solar Field Controller (SFC), which controls each heliostat independently according to the SSBR requirements.

Each heliostat is an independent unit, standing on a single pylon with rectangular mirrors on both sides. The heliostat stands just over 1 meter off the ground. A single mirror

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is 2.25m high and 3.21m wide (approx. 7.2 by 10.5 feet). With two mirrors per heliostat, the LH-2 heliostat yields a reflecting surface of 14.44 m².

Each heliostat is driven by a Dual Axis Drive, which tracks the sun and maintains the focal point on the Power Tower. The Dual Axis Drive has two stepper motors, which respectively regulate the azimuth and elevation angles.

Each heliostat is positioned by its Heliostat Controller, acting under the control of the SFC. Power may be provided by photovoltaic panels at each heliostat.

(iii) Tower and Solar Steam Boiler Receiver

The tower consists of a high metal structure, designed to support the Solar Steam Boiler Receiver (SSBR). The SSBR consists of steam generation, superheating and reheating sections. The SSBR is designed and manufactured according to conventional power boiler standards and procedures. The boiler tubes are covered by a special coating material that maximizes energy absorbance. Each SSBR section requires different intensity and distribution of light flux. The light flux on the SSBR is controlled by the solar field controller based on input from infra-red cameras measuring the temperatures on the SSBR and models of the flux. The solar field operates like a conventional fuel burner and its controller functions like a boiler management controller, including control and safety functions.

(iv) Power Block

The power block consists of a conventional steam turbine generator with a reheat cycle, and uses typical auxiliary functions of heat rejection, water treatment, water disposal, interconnection to the grid, control via distributed control system (DCS) and provision for operation and maintenance. The technology uses air cooling and, therefore, consumes only minimal quantities of water. A small wet/dry cooling system is used for auxiliary cooling requirements.

(v) System Optimization and Modeling

The aiming control system and the layout of solar fields are optimally designed to collect sunlight and send it to the SSBR in a manner that maximizes its steam output. The performance model and the ongoing calibration facilitate control and optimize plant operation. The role of these systems is detailed below.

- Aiming Control System

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The aiming control system communicates with the solar field controller, providing aiming points on the SSB for the heliostats. The solar field control then distributes corresponding instructions to each of the heliostat controllers.

The inputs provided to the aiming control system are objective functions, i.e., the light flux intensity and distribution required on the SSB, and various other conditions such as sun radiation, wind, air pressure and the number of heliostats available for tracking. The aiming control system then computes the optimal aiming points to provide the SSB with the required intensity and distribution of light flux so as to maximize the steam output. When computing the optimal aiming points, the aiming control system takes into account the differences between heliostats with respect to their tracking accuracy, the intensity of the beam they reflect (both of these factors are dependent mainly on the distance to the SSB), the shape of the beam and other relevant aspects.

For example, the light beams of heliostats that are close to the tower are smaller and denser, and, therefore, better suit the requirements of the superheating sections, where the light flux distribution needs to be accurate. The aiming control system will aim those heliostats on the superheating section most of the time.

- Solar Field Layout

The layout of the solar field consists of the dimensions of the solar field, the height of the tower, and the configuration of heliostats. The optimal layout design depends on various factors, including physical conditions such as site topography, blocking and shadowing effects between mirrors, the pattern of sun radiation, attenuation due to air pollution, and commercial conditions such as the cost of land and the relevant electricity demand, which is subject to the season and the time of day.

- The Performance Model

The performance model's function is to predict the hourly electricity output of the solar plant throughout the year, given the hourly data of sun radiation, wind and other weather data. It is based on a solar-to-flux model and a flux-to-electricity model. In calculating the output energy, these models take into account factors such as:

- ◇ Site's longitude and latitude
- ◇ Heliostats' location, orientation and beam shape
- ◇ Reflectivity of mirrors and dirt on the mirrors

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- ◇ Blocking and shadowing effects
- ◇ Attenuation of light along the reflected beam path
- ◇ The SSBR's energy absorbance
- ◇ Availability parameters of both the solar field and the power block
- ◇ Ongoing Calibration

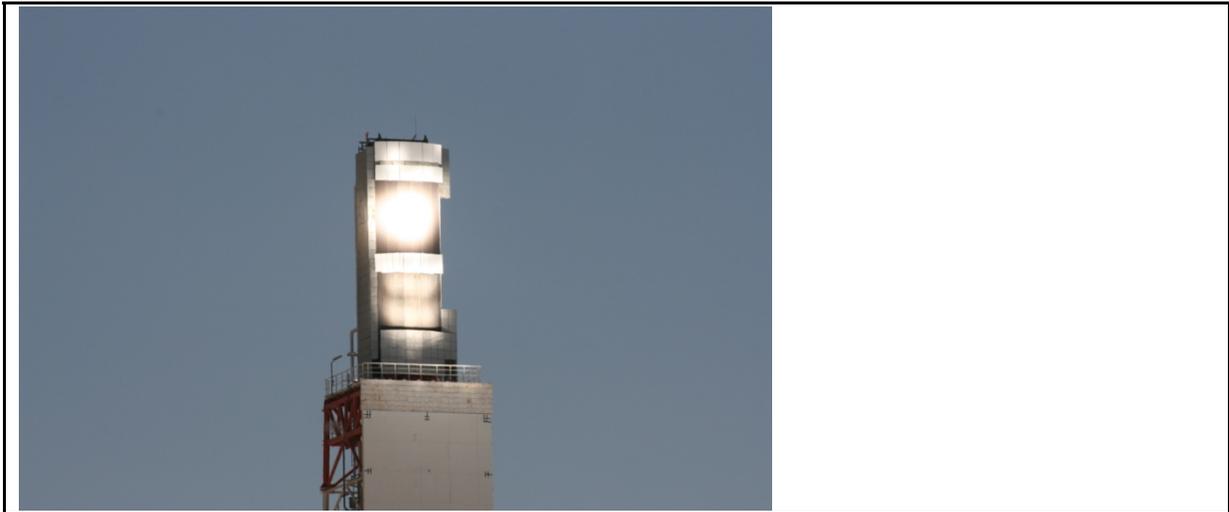


Figure 4: SSBR Operational (Top-Steam Generation, Bottom-Superheating)

(c) Principles of Operation

The system generates electricity using solar energy as its primary source. It is based on LPT power tower and heliostat mirror technology, in which heliostats in the solar field focus solar energy on a Solar Steam Boiler Receiver (SSBR) located on the power tower near the center of the heliostat array.

The solar field consists of thousands of heliostats, laid out to maximize their solar reflecting potential by minimizing shadowing (between heliostats) and blocking (between heliostats and the central tower). Each is independently controlled to maintain focus on a designated area on the SSBR.

The Rankine cycle reheat steam turbine receives live and reheat steam from the SSBR. The SSBR, including its superheater and reheater, is located at the top of the power

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tower adjacent to the turbine.

It may be desirable to add an auxiliary gas-fired boiler to operate in parallel with solar field. This decision will be made based on economic considerations as well as considering the limits to its usage dictated by applicable regulations.

The solar field and power generation equipment are started up each morning after sunrise and insolation build-up, and shut down in the evening when steam production drops below the level required to keep the turbine on-line.

The plant uses an air-cooled condenser, in order to save water in the site's desert environment. Water consumption is therefore minimal; water is mainly used to wash the heliostats.

The plant is controlled by a distributed control system, including the following sub-systems:

- Heliostat controller (HC): one per heliostat
- Solar Field Integrated Control System (SFICS): determines mode of operation and controls HCs accordingly; includes other applications related to control of solar field
- SSB Control System (SBCS): Controls the SSB
- Turbine Control System (TCS): controls the Turbine Generator
- BOP Control System (BOPCS): covering the balance of plant

The operation guidelines are as follows:

Summer: During summer months, electricity at full load can typically be produced during most of daylight hours, as soon as start-up conditions have been reached. The plant shut-down in the evening will be dependent on the optimization of the steam parameters for night preservation in order to shorten the start-up time next morning.

Intermediate: During the intermediate months, electricity is produced mostly at partial load. On cloudy days, depending on the prediction and the time of day when cloudy conditions reduce steam production below the minimum conditions required by the turbine operation, the solar field should be stowed.

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Winter: Operation will be similar to the intermediate months, with cloudy conditions more prevalent.

A site plan drawing and one-line diagram will be included with the Notice required pursuant to Section 3.8.

2. Site Description.

The Site is located in San Bernardino County, California, approximately 4.5 miles southwest of Primm, Nevada, and will be comprised of at least 700 contiguous acres within the area designated as “Ivanpah 2” on the map attached as Figure B-1. Seller shall, within thirty (30) days after the BLM has issued the ROW Grant, provide to SCE a detailed legal description and updated map of the Site.

*** End of EXHIBIT B ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT C
Notice List

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT C

Notice List

SOLAR PARTNERS I, LLC ("Seller")	SOUTHERN CALIFORNIA EDISON COMPANY ("SCE")
All Notices are deemed provided in accordance with Section 10.08 if made to the address and facsimile numbers provided below:	Unless otherwise specified, all Notices are deemed provided in accordance with Section 10.08 if made to the Contract Sponsor at the address or facsimile number provided below:
Contract Sponsor: Attn: Senior Vice President, Project Development Street: 1999 Harrison St., Ste 2150 City: Oakland, California 94612 Phone: (510) 550-8161 Facsimile: (510) 550-8165	Contract Sponsor: Attn: Vice-President, Renewable and Alternative Power Street: 2244 Walnut Grove Avenue City: Rosemead, California 91770 Phone: (626) 302-1212 Facsimile: (626) 302-1103
Reference Numbers: Duns: 79-891-7154 Federal Tax ID Number: 20-8812461	Reference Numbers: Duns: 006908818 Federal Tax ID Number: 95-1240335
Contract Administration: Attn: PPA Contracts Administrator Phone: (510) 550-8161 Facsimile: (510) 550-8165	Contract Administration: Attn: Phone: (626) 302- Facsimile: (626) 302-
Forecasting: Attn: Asset Management Phone: (510) 550-8161 Facsimile: (510) 550-8165	Generation Operations Center: Phone: (626) 307-4453 or Phone: (626) 307-4410

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

RAP ID# 5208, Solar Partners I, LLC

SOLAR PARTNERS I, LLC (“Seller”)	SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”)
<p>Day-Ahead Forecasting: Attn: Asset Management Phone: (510) 550-8161</p>	<p>Day-Ahead Scheduling: <u>Manager.</u> Attn: Manager of Day-Ahead Operations Phone: (626) 302-1323 Facsimile: (626) 302-3409</p> <p><u>Scheduling Desk.</u> Phone: (626) 307-4425 Backup: (626) 307-4420 Fax: (626) 302-3409 Email: PreSched@SCE.com</p>
<p>Real-Time Forecasting: Attn: Asset Management Phone: (510) 550-8161</p>	<p>Real-Time Scheduling: <u>Manager.</u> Attn: Manager of Real-Time Operations Phone: (626) 302-3308 Facsimile: (626) 302-3409</p> <p><u>Operations Desk.</u> Phone: (626) 307-4453 Back-up: (626) 307-4410 Fax: (626) 302-3409 Email: RealTime@SCE.com</p>
<p>Payment Statements: Attn: Accounts Receivable & Payable Phone: (510) 550-8161 Facsimile: (510) 550-8165 Email: AR&P@brightsourceenergy.com</p>	<p>Payment Statements: Attn: SCS Payments Phone: (626) 302- Facsimile: (626) 302-6524 Email: ContractSettlements@SCE.com</p>
<p>CAISO Charges and CAISO Sanctions: Attn: Asset Management Phone: (510) 550-8161 Facsimile: (510) 550-8165 Email: ASTMGMT@brightsourceenergy.com</p>	<p>CAISO Charges, CAISO Sanctions and SCE Penalties: Attn: SCS Payments Phone: (626) 302- Facsimile: (626) 302-6524 Email: ContractSettlements@SCE.com</p>

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

RAP ID# 5208, Solar Partners I, LLC

SOLAR PARTNERS I, LLC (“Seller”)	SOUTHERN CALIFORNIA EDISON COMPANY (“SCE”)
Payments: Attn: Accounts Receivable & Payable Phone: (510) 550-8161 Facsimile: (510) 550-8165 Email: AR&P@brightsourceenergy.com	Payments: Attn: SCS Payments Phone: (626) 302- Facsimile: (626) 302-6524 Email: ContractSettlements@SCE.com
Wire Transfer: BNK: Wells Fargo Bank, N.A. ABA: 121000248 ACCT: 4121436612	Wire Transfer: BNK: JP Morgan Chase Bank ABA: 02100002 ACCT: 323-394434
Credit and Collections: Attn: Accounts Receivable & Payable Phone: (510) 550-8161 Facsimile: (510) 550-8165 Email: AR&P@brightsourceenergy.com	Manager of Credit and Collateral: Attn: Manager of Credit Phone: (626) 302-1129 Facsimile: (626) 302-2517
With additional Notices of an Event of Default or Potential Event of Default to: Attn: General Counsel Phone: (510) 550-8161 Facsimile: (510) 550-8165 Email: GENCNSL@brightsourceenergy.com	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Manager SCE Law Department Power Procurement Section Phone: (626) 302-1212 Facsimile: (626) 302-1904
Guarantor: Attn: Phone: Facsimile: Email:	
Lender: Attn: Phone: Facsimile: Email:	

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RAP ID# 5208, Solar Partners I, LLC

**** End of EXHIBIT C ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

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

EXHIBIT D

Forecasting and Scheduling Requirements and Procedures

1. Introduction.

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

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

2. Seller's Forecasting Requirements.

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

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

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

In the event that the Web Client becomes unavailable, Seller shall provide SCE with the Production Forecast by telephoning SCE's Generation

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Operations Center, at the telephone number(s) listed in Exhibit C.

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

Seller learns of any change in the energy production of the Generating Facility for a period covered by the most recent Production Forecast update resulting from any cause prior to the time that the next weekly update of the Production Forecast is due which Seller is required to report under the provisions of the CAISO Tariff related to PIRP and under other applicable provisions of the CAISO Tariff related to availability and outage reporting, then Seller shall

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provide an updated Production Forecast to SCE. This updated Production Forecast must be submitted to SCE via the Web Client by no later than:

- (iv) 5:30 am PPT on the day prior to any day impacted by the change, if the change is known to Seller at that time;
- (v) Thirty (30) minutes before the commencement of any hour impacted by the change, if the change is known to Seller at that time; or
- (vi) If the change is not known to Seller by the timeframes indicated in (i) or (ii) above, no later than twenty (20) minutes after Seller becomes aware of the event which caused the availability change;

provided that, should Seller experience an unplanned outage, Seller shall provide an updated Production Forecast to SCE no later than twenty (20) minutes after Seller becomes aware of the event.

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

- (vii) The beginning date and time of the event resulting in the energy production change;
 - (viii) The expected ending date and time of the event;
 - (ix) The expected energy production, in MW; and
 - (x) Any other information required by the CAISO as communicated to Seller by SCE.
- (e) For the avoidance of doubt, Seller's sole obligation with respect to any Production Forecast is to provide a good-faith estimate of the energy production for the relevant period specified and Seller shall not be liable for any penalties, charges or otherwise so long as it is acting in good faith with respect to its Forecasting obligations.

3. SCE's Scheduling Responsibilities.

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

- (a) Based on and using the Production Forecast submitted to SCE pursuant to Section 2 above, including updated Production Forecasts to the extent

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RAP ID# 5208, Solar Partners I, LLC

reasonably practicable, to forecast in good faith Seller's expected generation using SCE's forecasting model ("SCE's Projected Energy Forecast") in any given hour.

- (b) Adjusting SCE's Projected Energy Forecast for forecasted electric energy line losses to reflect Seller's self-provision of those losses and the amount of electric energy Seller is expected to deliver to the Delivery Point.
 - (c) Submitting the adjusted forecasts to the CAISO as SC Schedules.
 - (d) Receiving notification of the Final Schedules from the CAISO.
4. Seller's Outage Scheduling Requirements.

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

*** End of EXHIBIT D ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT E

*Product Produced Using Non-Renewable Fuel &
Energy Price for Non-RPS Eligible Product*

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

Exhibit E

Product Produced Using Non-Renewable Fuel & Energy Price for Non-RPS Eligible Product

EXHIBIT E

Product Produced Using Non-Renewable Fuel & Energy Price for Non-RPS Eligible Product

1. Determination of Proportion of Non-RPS Eligible Product.

If determination of the quantity of Product produced using non-renewable fuel is required under Section 4.02(c), such quantity shall be determined for each Settlement Interval using the following formula:

$$Q = T * N$$

where:

Q = Quantity of megawatt-hours of Product produced using non-renewable fuel for such Settlement Interval.

T = the total quantity of megawatt-hours produced in such Settlement Interval, and

N = the percentage of Product produced using non-renewable fuel applicable to that Settlement Interval, determined using the approved Renewable/Non-Renewable Fuel Use Methodology as provided in Section 3.11(b)(vii), which may be calculated monthly.

*** End of EXHIBIT E ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT F

Energy Replacement Damage Amount

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT F*Energy Replacement Damage Amount*

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

ENERGY REPLACEMENT DAMAGE AMOUNT =

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

Where:

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

Notes:

1. In the above calculation, the value used in the formula for the result of "(D - E)" shall not be greater than five cents (\$0.05) per kWh or less than two cents (\$0.02) per kWh (for example, if the result of "(D-E)" is six cents (\$0.06) per kWh, the value used in the formula shall be five cents (\$0.05)).

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2. If the result of the calculation above is zero or less, Seller shall not be obligated to pay an Energy Replacement Damage Amount.
3. In no event shall SCE pay an Energy Replacement Damage Amount.

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

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT G

Seller's Milestone Schedule

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT G
Seller's Milestone Schedule

<i>No.</i>	<i>Date</i>	<i>Milestones</i>
1	Sept. 2006	Interconnection application submitted.
2	Dec. 2006	BLM land application filed.
3	Aug. 2007	CEC AFC filed.
4	Aug. 2007	Air Quality Management District application filed.
5	Dec. 2008	Air Quality Management District Final Determination of Compliance received.
6	22 Months Before Startup Deadline	Steam turbine procurement.
7	22 Months Before Startup Deadline	Engineering, Procurement and Construction ("EPC") contract executed.
8	22 Months Before Startup Deadline	CEC/BLM authorization to construct received.
9	22 Months Before Startup Deadline	Construction Financing closed.
10	22 Months Before Startup Deadline	Groundbreaking.
11	2 Months Before Startup Deadline	Initial Synchronization achieved.
12	January 31, 2013	Forecasted Initial Operation Date.

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

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT G-1

Seller's Construction Permit Schedule

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

*RAP ID# 5208, Solar Partners I, LLC***EXHIBIT G-1***Seller's Construction Permit Schedule*

<i>No.</i>	<i>Date</i>	<i>Material Construction Permit</i>
1	22 Months Before Startup Deadline	BLM Right-of-Way/Record of Decision received.
2	22 Months Before Startup Deadline	CEC AFC (including the Air Quality Management District Final Determination of Compliance) received.
3	22 Months Before Startup Deadline	Biological Opinion, Endangered Species Act Section 7 issued.
4	20 Months Before Startup Deadline	Clean Water Act Section 401 Permit received.
5	20 Months Before Startup Deadline	Clean Water Act Section 404 Permit received.
6	20 Months Before Startup Deadline	Incidental Take Permit, California Endangered Species Act of 1984 (Fish and Game Code Section 2081) received.

*** *End of EXHIBIT G-1* ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT H

Milestone Progress Reporting Form

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT H*Milestone Progress Reporting Form*

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

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

Each Milestone Progress Report shall include the following items:

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

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RAP ID# 5208, Solar Partners I, LLC

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

*** End of EXHIBIT H ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT I

Form of Guaranty Agreement

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT I

Form of Guaranty Agreement

1. Guaranty.

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

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

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

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

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

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

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

2. Guaranty Limit.

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

3. Guaranty Absolute.

Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute,

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

RAP ID# 5208, Solar Partners I, LLC

independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

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

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RAP ID# 5208, Solar Partners I, LLC

- (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
- (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
- (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
- (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
- (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (x) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction; and
- (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

4. Termination; Reinstatement.

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

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

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

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

5. Bankruptcy; Post-Petition Interest.

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

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

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

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shall be included in the Obligations.

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

6. Subrogation.

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

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

7. Subordination.

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

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

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

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

- (b) If Beneficiary so requests:

(i) All instruments evidencing such indebtedness shall be duly endorsed and delivered to Beneficiary;

(ii) All security for such indebtedness shall be duly assigned and delivered

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to Beneficiary;

- (iii) Such indebtedness shall be enforced, collected and held by Guarantor as trustee for Beneficiary and shall be paid over to Beneficiary on account of the Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty; and
 - (iv) Guarantor shall execute, file and record such documents and instruments and take such other actions as Beneficiary deems necessary or appropriate to perfect, preserve and enforce Beneficiary's rights in and to such indebtedness and any security therefor.
- (c) If Guarantor fails to take any such action, Beneficiary, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor.

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

8. Waivers of Guarantor.

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

This means, among other things:

- a. The creditor may collect from the guarantor without first

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foreclosing on any real or personal property collateral pledged by the debtor.

- b. If the creditor forecloses on any real property collateral pledged by the debtor:
 - (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

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

- (ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason other than full performance or payment;

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- (f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;
 - (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
 - (h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;
 - (i) Other than demand for payment, the Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
 - (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary.

No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. Assignment, Successors and Assigns.

This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors, assigns and creditors, and can be modified only by a written instrument signed by the Beneficiary and the Guarantor.

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

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

11. Representations of Guarantor.

Guarantor hereby represents and warrants that:

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

12. Financial Statements.

- (a) If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
 - (i) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year,

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setting forth in each case in comparative form the figures for the previous year; and

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

13. Attorneys’ Fees.

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

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

14. Governing Law.

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

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

15. Construction.

All parties to this Guaranty are represented by legal counsel.

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

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

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

16. Amendment; Severability.

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

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

17. Third Party Rights.

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

18. Notices.

Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:
Southern California Edison Company

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

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2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: [\[Credit Manager\]](#)
Phone: (626) 302-
Facsimile: (626) 302-

with a copy to:

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 4-D
Rosemead, CA 91770
Attn: Manager, Renewable and Alternative Power
Phone: (626) 302-
Facsimile: (626) 302-

with an additional copy to:

Southern California Edison Company
2244 Walnut Grove Avenue, Quad 3-B
Rosemead, CA 91770
Attn: Manager, Power Procurement Section, Law Dept
Phone: (626) 302-
Facsimile: (626) 302-

Guarantor:

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

Principal:

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

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

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

_____ *[legal name]*

By: _____

Name: _____

Title: _____

Date: _____

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

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT J

Non-Disclosure Agreement

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

SECOND AMENDED NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

BrightSource Energy, Inc.

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and BrightSource Energy, Inc. ("BSE"), a Delaware corporation, hereby enter into this Second Amended Non-Disclosure Agreement ("Agreement").

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

RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources ("ERRs") on March 12, 2007, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. BSE desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by BSE to SCE as part of BSE's submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to BSE as part of discussions or negotiations with BSE concerning BSE's Proposal.
- D. The Parties executed an original Non-Disclosure Agreement effective June 21, 2007. After executing the original Non-Disclosure Agreement, BSE discovered the need to review Confidential Information, as defined herein, with one or more outside experts, who could be considered consultants or subcontractors, and such review was potentially not covered under the original Non-Disclosure Agreement. SCE is agreeable to such disclosures by BSE on the terms set forth herein. Accordingly, on September 12, 2008, the Parties executed an Amended Non-Disclosure Agreement, which superseded the Original Non-Disclosure Agreement.
- E. After executing the Amended Non-Disclosure Agreement, BSE's scheduling management consultant sought clarification of the time period covered by the Amended Non-Disclosure Agreement. BSE and SCE agreed to amend the Amended Non-Disclosure Agreement and the parties executed this Second Amended Non-Disclosure

Agreement, which supersedes the Amended Non-Disclosure Agreement as of the Effective Date set forth below.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

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

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

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

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

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

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

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

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

or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations.

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

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

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

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

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

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

If to BSE: BrightSource Energy, Inc.
1999 Harrison Street, Suite 2150
Oakland, CA 94612
Attn: Senior Vice President, Project Development
Telephone: (510) 550-8161
Facsimile: (510) 550-8165

With copy to:

BrightSource Energy, Inc.
1999 Harrison Street, Suite 2150
Oakland, CA 94612
Attn: General Counsel
Telephone: (510) 550-8161
Facsimile: (510) 550-8165

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

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

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

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

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

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

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

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

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

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

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

BrightSource Energy, Inc.

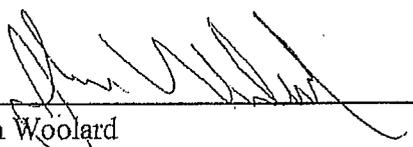
**SOUTHERN CALIFORNIA EDISON
COMPANY,**

A Delaware corporation.

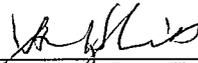
A California corporation.

By:

By:



John Woolard
President and CEO



Stuart R. Hemphill
Vice President
Renewable and Alternative Power

Date: October , 2008

Date: 10/31/08

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT J

Non-Disclosure Agreement

See attached.

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

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

RAP ID# 5208, Solar Partners I, LLC

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

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

RAP ID# 5208, Solar Partners I, LLC

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

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

<u>Energy Payment Allocation Factors</u>			
<i>Season</i>	<i>TOD Period</i>	<i>Calculation Method</i>	<i>Energy Payment Allocation Factor</i>
Summer	On-Peak	Fixed Value.	3.13
	Mid-Peak	Fixed Value.	1.35
	Off-Peak	Fixed Value.	0.75
Winter	Mid-Peak	Fixed Value.	1.00
	Off-Peak	Fixed Value.	0.83
	Super-Off-Peak	Fixed Value.	0.61

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

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

*** End of EXHIBIT K ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT L

Procedure for Partial or Full Return of Development Security

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT L

Procedure for Partial or Full Return of Development Security

1. Seller's Request for Development Security Refund.

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

- (a) Termination pursuant to Sections 2.04(a), 2.04(b), 2.04(c), 3.08 or 5.05; or
- (b) Seller has completed installation of Generating Facility pursuant to the Generating Facility and Site Description set forth in Exhibit B.

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

If SCE does not dispute Seller's Notice of request for Development Security refund pursuant to Item 1(a) above, SCE shall return the Development Security to Seller, or Letter of Credit to the issuing bank, within ten (10) Business Days after such Notice, unless SCE provides timely Notice to Seller that additional days are required to substantiate data.

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

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

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

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

RAP ID# 5208, Solar Partners I, LLC

- (d) Based upon the information in Item 3(a), calculate the amount of Development Security refund due Seller pursuant to Sections 3.04(d) and 3.04(e) of the Agreement.
- (e) Provide Notice to Seller of the amount of Development Security being returned pursuant to Item 3(c), the amount of Development Security forfeited, as applicable, and the reason(s) that a forfeiture of all or part of the Development Security is appropriate.
- (f) Return any Development Security due Seller if such Development Security were posted in the form of cash.
- (g) Return the Letter of Credit to the issuing bank if the total amount of the posted Development Security is due Seller. If Seller is only entitled to a partial return of the Development Security SCE shall submit a drawing certificate on the Letter of Credit for the amount of Development Security forfeited by Seller, after which SCE shall release the remaining balance of the Letter of Credit.

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

*** End of EXHIBIT L ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT M

Seller's Calculation of Lost Output

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT M

Seller's Calculation of Lost Output

Lost Output, as used in Section 3.20, shall be estimated by Seller in accordance with the procedures described in this Exhibit M.

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

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

1. Log of Lost Output Events.

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

- (a) One (1) column for a Lost Output event number;
- (b) One (1) column for the Term Year number;
- (c) One (1) column for the start date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the duration;
- (h) One (1) column for the weekday;
- (i) One (1) column for the cause; and
- (j) One (1) column for the projected Metered Amount applicable to the Settlement Intervals of the Lost Output event as set forth in Schedule M-1.

2. Calculation of Lost Output.

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

RAP ID# 5208, Solar Partners I, LLC

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

- (a) One column for an item number;
- (b) One (1) column for the Lost Output event number;
- (c) One (1) column for the state date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the duration;
- (h) One (1) column for the weekday;
- (i) One (1) column for the cause;
- (j) One (1) column for the projected Metered Amount applicable to the Settlement Intervals of the Lost Output event as set forth in Schedule M-1;
- (k) One (1) column calculating the Metered Amounts that would have been produced by the Generating Facility, but for the Lost Output event:
 - (i) *Multiplying* the duration set forth in Item 2(g);
 - (ii) *Times* the projected Metered Amount set forth in Item 2(j);
 - (iii) *Divided* by six.

3. Assignment of Lost Output Calculation to an Independent Consultant.

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

*** End of EXHIBIT M ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT N

Form of Letter of Credit

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT N
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 1D

Rosemead, CA 91770

Ladies and Gentlemen:

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

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

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are

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RAP ID# 5208, Solar Partners I, LLC

not authorized or required to close in Los Angeles, California.

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

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

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

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

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

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

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

RAP ID# 5208, Solar Partners I, LLC

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title: _____

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

RAP ID# 5208, Solar Partners I, LLC

ATTACHMENT A

Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number: _____

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

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

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RAP ID# 5208, Solar Partners I, LLC

payment obligations.

- []C. The Letter of Credit will expire in fewer than 20 Local Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.
 - []E. The Beneficiary has not been paid any or all of the Applicant's payment obligations now due and payable under the Agreement.
 - []F. The Beneficiary is entitled to retain the entire Development Security: (i) as a result of Applicant's failure to achieve Initial Operation by the Startup Deadline or any extended Startup Deadline as provided in the Agreement, (ii) because the Agreement has terminated due to an Event of Default by Applicant prior to the Startup Deadline, (iii) because the Agreement has terminated due to the occurrence of any of the circumstances set forth in Sections 3.04(c)(i)(B), (C), (D), (E), (F) or (G), or (iv) because the Agreement has terminated due to the agreement of the Parties that Initial Operation will not occur on or before the Startup Deadline.
 - []G. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of *[Ten Dollars (\$10)]* per kilowatt times the Unincluded Capacity in kilowatts as a result of Applicant demonstrating only a portion of the Contract Capacity.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
 3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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

RAP ID# 5208, Solar Partners I, LLC

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

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

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT O

SCE's Memorandum of Agreement

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT O

SCE's Memorandum of Agreement

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO:

Southern California Edison

2244 Walnut Grove Avenue
Rosemead, California 91770

Attention: J. Eric Isken, Esq.

APN: _____

(Space Above for Recorder's Use Only)

MEMORANDUM OF AGREEMENT

NOTICE IS GIVEN THAT SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation ("SCE"), and *[Seller's Name]*, a *[Seller's business registration]* ("Seller"), have entered into that Renewable Power Purchase and Sale Agreement dated as of _____ (as amended, supplemented and revised from time to time, the "Agreement"). Pursuant to the Agreement, SCE has the right to purchase all electric energy, Green

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

RAP ID# 5208, Solar Partners I, LLC

Attributes, Capacity Attributes and Resource Adequacy Benefits (as such terms are defined in the Agreement) associated with or attributable to any generating facilities located or to be located on that certain real property (the "Property") more particularly described on Exhibit A attached hereto and incorporated herein by the reference.

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

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

[Signatures are on the following page]

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

RAP ID# 5208, Solar Partners I, LLC

[SELLER'S NAME]

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a *[Seller's business registration]*

a California corporation.

By: _____

By: _____

Its:

Date: _____

*Vice President,
Renewable and Alternative Power*

Date: _____

By: _____

Its:

Date: _____

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT A

[Legal Description of Property]

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

RAP ID# 5208, Solar Partners I, LLC

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

)

COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

[SEAL]

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

RAP ID# 5208, Solar Partners I, LLC

ACKNOWLEDGMENT

STATE OF CALIFORNIA)

)

COUNTY OF LOS ANGELES)

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

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

WITNESS my hand and official seal.

[SEAL]

*** End of EXHIBIT O***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT P

Seller's Financial Information for Consolidation

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT P

Seller's Financial Information for Consolidation

Seller and SCE agree that if SCE provides Notice to Seller pursuant to Section 3.21:

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

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

Seller shall prepare its financial statements to be delivered under the terms of Section 3.21 and this Exhibit P in accordance with accounting principles generally accepted in the United States of America.

2. Promptly upon Notice from SCE, Seller shall allow SCE access to Seller's records and personnel, so that SCE's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for any such audit shall be borne by SCE.
3. SCE shall provide Notice to Seller if, in the sole discretion of SCE, Seller's internal controls of financial reporting (directly or indirectly, alone or in combination with other factors) would be considered material to SCE or its parent company's financial statements, financial condition or internal controls of financial reporting.
4. Within thirty (30) days of Seller's receipt of Notice from SCE, Seller shall remediate any deficiency in Seller's internal controls of financial reporting identified by SCE

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

RAP ID# 5208, Solar Partners I, LLC

- during or as a result of the audits permitted under Section 3.21 and this Exhibit P.
5. As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to SCE a Notice describing such occurrence in sufficient detail to permit SCE to make a Form 8-K filing with the United States Securities and Exchange Commission. Such occurrences include all reportable events on the then-current Form 8-K that applies to SCE and its parent company at such time, including the following events:
- (a) Acquisition or disposition of a material amount of assets;
 - (b) Creation of a material direct financial obligation or off-balance sheet financing arrangement;
 - (c) Existence of material litigation; and
 - (d) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent.
6. SCE shall treat Seller's financial statements or other financial information provided under the terms of Section 3.21 and this Exhibit P in strict confidence and, accordingly:
- (a) Shall utilize such Seller financial information only for purposes of preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, for making regulatory, tax or other filings required by law in which SCE is required to demonstrate or certify its or any parent company's financial condition or to obtain Credit Ratings; and
 - (b) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying SCE's or any SCE parent company's financial statements, to the United States Securities and Exchange Commission and the Public Company Accounting Oversight Board (United States) in connection with any oversight of SCE's or any SCE parent company's financial statements and to those persons or entities who are entitled to receive confidential information as identified in Section 10.10.

*** End of EXHIBIT P***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT Q

CAISO Charges, CAISO Sanctions and SCE Penalties

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

Exhibit Q

CAISO Charges, CAISO Sanctions and SCE Penalties

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT Q

CAISO Charges, CAISO Sanctions and SCE Penalties

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

1. Determining Potential Applicability of SCE Penalty.

(a) In the event Seller does not:

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

SCE will reasonably determine if Seller complied with its obligation as set forth in Exhibit D to provide good-faith Production Forecasts for the month covered by the report. If SCE determines that:

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

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

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

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

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

RAP ID# 5208, Solar Partners I, LLC

2. SCE Penalty.

- (a) Subject to Sections 2(b) and 2(c) below, the SCE Penalty shall be one hundred fifty percent (150%) of the Energy Price for RPS-Eligible Product in Section 1.06 for each MW of energy production deviation, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 1(a).
- (b) The SCE Penalty will be waived the first hour of the first calendar day (and any subsequent hours of such day) in each month in which Seller fails to meet the requirements in Section 1(a).
- (c) The SCE Penalty will be assessed during any hour of any calendar day thereafter in that month in which Seller fails to meet the requirements in Section 1(a).

3. CAISO Sanctions.

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

4. Billing and Documentation of CAISO Sanctions.

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

*** End of Exhibit Q ***

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT R

Independent Engineer

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT R

Independent Engineer

The following entities are approved by the Parties to serve as the Independent Engineer:

R.W. Beck, Inc.
CH2M HILL

**** End of Exhibit R ****

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT S
Meteorological Station Specifications

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT S

Meteorological Station Specifications

Pursuant to Section 3.06(g), Seller shall install and maintain a minimum of one (1) stand-alone meteorological equipment station for each one (1) square mile, or portion thereof, of the Site. Before Initial Synchronization, only one (1) station shall be required to provide meteorological data relative to Section 3.25(a). Each station shall be equipped with instruments and equipment that meet or exceed those specifications set forth in the CAISO's PIRP Solar Telemetry Requirements and are compatible with the requirements of SCE. SCE and Seller acknowledge that SCE may update this Exhibit S from time to time in order to accommodate industry standards, the CAISO's PIRP Solar Telemetry Requirements and the needs of SCE.

Seller shall be required to maintain the meteorological station in accordance with Prudent Electrical Practices. In addition, the solar irradiance sensors must be cleaned daily and after storm events.

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

1. Equipment Stations.

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

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

RAP ID# 5208, Solar Partners I, LLC

- (b) In addition, Seller shall report:
 - (i) Solar altitude angle;
 - (ii) Solar azimuth angle; and
 - (iii) Precipitation.
- (c) All sensors shall be set at a height location representing the height from ground level of the solar collection point.

2. Attributes of Equipment Station Locations.

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

3. Communication.

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

4. Minimum Equipment Requirements.

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

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

Table T-1: Required Meteorological Sensor Accuracy

Paragraph	Instrument	Range	Minimum Sensor Accuracy	Acceptable Sensors
5.(b)(i) 5.(b)(ii)	Air temperature sensor	-40 to +60°C	±0.9°C	<ul style="list-style-type: none"> Campbell CS107, CS215 Vaisala QMT103, QMT110
5.(b)(iii)	Barometric pressure sensor	600 to 1100 hPa	±1.5 hPa	<ul style="list-style-type: none"> Campbell CS106 Vaisala PMT16A
5.(b)(iv)	Wind speed sensor	0.5 to 50 m/s	±0.5 m/s	<ul style="list-style-type: none"> Vaisala WS425 Gill Instruments Windsonic4
5.(b)(iv)	Wind direction sensor	0 to 360°	±5°	<ul style="list-style-type: none"> Viasala WS425 Gill Instruments Windsonic4
5.(b)(v)	Relative humidity sensor	0 to 100% RH	±4.0%	<ul style="list-style-type: none"> Campbell CS215 Vaisala HMT100
5.(b)(vi)	Rotating Shadowband Radiometer	305 to 2800 nm	DNI ±5% GH±2% DIF±3%	<ul style="list-style-type: none"> Irradiance Inc Model RSR-2
5.(b)(vii)	Pyrheliometer direct normal irradiation sensor with tracker.	200 to 4000 nm	10 $\mu\text{V}/\text{Wm}^{-2}$	<ul style="list-style-type: none"> Kipp&Zonen Model CHP-1 Eppley Labs Model NIP

5. Example Meteorological Station.

(a) MAWS301 AWS System

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

- QML201 AWS Logger with 1.7 MB Flash memory for data logging

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

RAP ID# 5208, Solar Partners I, LLC

- QBR101B Battery regulator
 - ENC542PLM Equipment enclosure with backup battery mounting accessories and internal wiring
 - Bottom plate with signal connectors for sensors and peripheral equipment
 - MAWS LIZARD Set-up software
 - MAWS Terminal software
- (ii) ENC542SHIELD Radiation Shield for MAWS301 enclosure
- (iii) QMZ101 Terminal/maintenance cable for MAWS
- (iv) QMBATT12 Back-up battery - 12 Ah/12V, installed in MAWS enclosure, includes wiring
- (b) Sensors
- (i) QMT110 Air temperature sensor with 10 m cable and connector
- DTR502P22 Radiation shield for QMT110 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)
- (ii) QMT103 Air temperature sensor with 5-m cable and connector
- 212417 Extension cables, 25m, shielded, 5-pin F-M connector for QMT103 sensor
 - DTR502P22 Radiation shield for QMT103 (air temp sensor) including mounting accessories to a pole/mast (60-100 mm)
- (iii) PMT16A Barometric pressure sensor installed within the MAWS301 enclosure
- (iv) M301-WS425STDH Heated Ultrasonic Wind Sensor with RS485 & power output cable, sensor mounting on 60 mm diameter pole/mast and 36 VDC power supply

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

RAP ID# 5208, Solar Partners I, LLC

- (v) HMT 100 humidity and temperature sensor
 - (vi) Model RSR-2, Rotating Shadowband Radiometer System from Irradiance Inc. for site global horizontal and diffuse irradiance
 - (vii) Eppley Labs Model NIP pyrhelimeter with solar tracker.
- (c) Powering.
- MCP150-M3-115 Mains (AC) power supply, installed in enclosure (ENC542PLM), including wiring and surge arrestors for 115 VAC
- (d) Communication.*
- (i) DSI485ASET48-M3 Isolated RS-485 module - 2 wire connection, including extra surge arrestors for both lines, installed in MAWS enclosure communications from logger to WS425 sensors
 - (ii) DME421-M3 Ethernet interface serial port to VSAT transmitter. Module mounted within MAWS enclosure
 - (iii) VSAT Hardware, VSAT transmitter, cables with connectors, testing of each site, antenna positioners, mounting hardware. Installation at each site should include program fee for VSAT module.
- (e) Install Accessories.
- (i) APPK-60SET Mast mounting for MAWS enclosure on a 50-60 mm diameter pole/mast/tower
 - (ii) QSA124PT Surge Arrestor for QMT103/110 Temp sensor lines (4-wire)

* The Satellite communication requires an unencumbered south-by-south west view of the sky for antenna placement. Weather Station data will be transmitted to SCE consistent with the employed methods at the time of installation.

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

RAP ID# 5208, Solar Partners I, LLC

- (iii) #010411 Shielded RS485 cabling from MAWS301 to WS425STDH - 10m cables
- (iv) QSA224DC Surge Arrestor for RS485 lines, wind sensors at 10m

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

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT T

Non-RPS Eligible Product Damages Payment

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

RAP ID# 5208, Solar Partners I, LLC

EXHIBIT T

Non-RPS Eligible Product Damages Payment

If the CEC or WREGIS certifies that annual delivery of Non-RPS Eligible Product from the Generating Facility is greater than 1% above the de minimus amount permitted for the Generating Facility as allowed by the CEC pursuant to the eligibility rules, regulations or guidelines issued pursuant to the RPS Legislation, as may be amended from time to time, the shortfall damages payment (the “Non-RPS Eligible Product Damages Payment”) shall be calculated as set forth below:

$$BF_{\text{CEC}} \times Q \times \text{GPC} \times \text{DF}$$

WHERE:

BF_{CEC} = the fraction of Metered Amounts that is Non-RPS Eligible as calculated by the CEC.

Q = annual Metered Amounts.

GPC = the “Green Power Component,” equal to the replacement cost of Renewable Energy Credits purchased by Seller, acting in a commercially reasonable manner, as a replacement for any Renewable Energy Credits not delivered by Seller. Factors used in determining the value of Renewable Energy Credits may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of Seller, including without limitation, quotations of relevant rates, prices or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets and settlement prices for comparable transactions at liquid trading hubs. If unbundled Renewable Energy Credits are not available for purchase under the RPS Legislation or the rules and regulations of the CPUC, the Parties shall negotiate in good faith to develop an alternate methodology to determine the Green Power Component.

DF = the applicable “Damage Factor” as set forth in the following table:

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

RAP ID# 5208, Solar Partners I, LLC

<i>Damage Factor Ranges</i> <i>For Non-RPS Eligible Metered Amounts expressed as a percent of annual Metered Amounts (above the permitted de minimus amount)</i> <i>defined as</i> <i>(BF_{CEC})</i>	<i>Damage Factor</i> <i>(DF)</i>
<i>>1% and ≤ 3%</i>	1
<i>>3% and ≤ 5%</i>	2
<i>>5%</i>	3

Notwithstanding the foregoing, in lieu of paying the Non-RPS Eligible Damages Payment to SCE, Seller may supply Renewable Energy Credits in an amount equal to the portion of Metered Amounts for the relevant period that is Non-RPS Eligible.

The Renewable Energy Credits to be supplied by Seller to SCE must replace those Renewable Energy Credits that would have been associated with the Non-RPS Eligible Metered Amounts had such amounts qualified as RPS Eligible.

**** End of EXHIBIT T ****

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

FIRST AMENDMENT

to the

RENEWABLE POWER PURCHASE AND SALE AGREEMENT *between*

SOUTHERN CALIFORNIA EDISON

and

Solar Partners I, LLC

(RAP ID #5208)

PREAMBLE

This First Amendment to Renewable Power Purchase and Sales Agreement (this "Amendment") is made and entered into as of March 25, 2009 (the "Effective Date") by and between:

- (i) **Southern California Edison Company ("SCE")**, a California corporation, whose principal place of business is at:
2244 Walnut Grove Avenue, Rosemead, California 91770, and.
- (ii) **Solar Partners I, LLC ("Seller")**, a Delaware limited liability company, whose principal place of business is at:
1999 Harrison Street, Suite 2150, Oakland, California 94612.

RECITALS

WHEREAS, SCE and Seller have entered into that certain Renewable Power Purchase and Sales Agreement, dated as of February 5, 2009 (the "Agreement") and attached hereto as Exhibit B; and

WHEREAS, the California Public Utilities Commission (the "Commission") issued Decision 07-11-025, with additional direction in Decisions 08-04-009 and 08-08-028 requiring that certain standard terms and conditions appear in all renewable power purchase agreements submitted for approval of the Commission; and

WHEREAS, SCE and Seller now wish to amend the Agreement as set forth herein to comply with such decisions,

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

First Amendment to Renewable Power Purchase and Sale Agreement

WHEREAS, SCE and BrightSource Energy, Inc., a Delaware corporation and the parent entity of Seller ("BSE"), have entered into that certain Second Amended Non-Disclosure Agreement, dated as of October 31, 2008 (the "SCE-BSE Second Amended Non-Disclosure Agreement"); and

WHEREAS, SCE and Seller have entered the Non-Disclosure Agreement between Southern California Edison and Seller dated as of March 23, 2009 ("Non-Disclosure Agreement") and attached hereto as Exhibit A, which incorporates the SCE-BSE Second Amended Non-Disclosure Agreement; and

WHEREAS, SCE and Seller wish to replace Exhibit J, the SCE-BSE Second Amended Non-Disclosure Agreement, with the Non-Disclosure Agreement;

Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Section 10.02 Additional Seller Representations, Warranties and Covenants.

Section 10.02(b) set forth in the Agreement is hereby deleted in its entirety and replaced with the following:

- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:
 - (i) The Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
 - (ii) The Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard.

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

2. Exhibit A: Definitions.

- a. The definition of "CPUC Approval" set forth in the Agreement is hereby deleted in its entirety and replaced with the following:

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

First Amendment to Renewable Power Purchase and Sale Agreement

“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.

b. The definition of “Green Attributes” set forth in the Agreement is hereby deleted in its entirety and replaced with the following:

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

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

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.

3. Exhibit J: Non-Disclosure Agreement.

Exhibit J, the SCE-BSE Second Amended Non-Disclosure Agreement dated October 31, 2008 set forth in the Agreement is hereby deleted in its entirety and replaced with the following:

Exhibit J: Non-Disclosure Agreement dated March 23, 2009.

4. Miscellaneous.

- (a) Effective Date. This Amendment shall be effective upon due execution.

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

First Amendment to Renewable Power Purchase and Sale Agreement

- (b) Reservation of Rights. Both Parties expressly reserve all of its rights and remedies under the Agreement.
- (c) Legal Effect. Except as expressly set forth herein, the Agreement shall remain unchanged and shall remain in full force and effect.
- (d) Successors and Assigns. The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the parties hereto, whether so expressed or not. Notwithstanding the foregoing, the Parties shall not assign any rights or delegate any duties under the Agreement, as modified by this Amendment, except as provided in the Agreement.
- (e) Severability. If any provision or provisions of this Amendment shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- (f) Headings. The headings in this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.
- (g) 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.
- (h) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (i) Entire Agreement. This Amendment sets forth the entire agreement of the Parties hereto with respect to the subject matter, and supersedes all previous understandings, written or oral, with respect thereto.

*** End of First Amendment ***

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

First Amendment to Renewable Power Purchase and Sale Agreement

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written above :	
Solar Partners I, LLC, A Delaware limited liability company.	SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation.
By: 	By: 
Name: Tom Doyle Title: E.V.P. Global Development	Stuart R. Hemphill Vice President, Renewable Power Procurement
Date: March 26, 2009	Date: 3/31/09

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

First Amendment to Renewable Power Purchase and Sale Agreement

EXHIBIT A
Non-Disclosure Agreement

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

First Amendment to Renewable Power Purchase and Sale Agreement

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

AND

SOLAR PARTNERS I, LLC

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and SOLAR PARTNERS I, LLC, a Delaware limited liability company ("Solar Partners"), hereby enter into this Non-Disclosure Agreement (this "Agreement").

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

RECITALS

- A. SCE and BrightSource Energy, Inc., a Delaware corporation and the parent entity of Solar Partners ("BSE"), executed that certain Second Amended Non-Disclosure Agreement, dated as of October 31, 2008 (the "Second Amended Non-Disclosure Agreement"), and attached hereto as Appendix 1.
- B. Solar Partners and SCE now wish to enter into this Agreement with SCE on substantially similar terms and conditions as the Second Amended Non-Disclosure Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Except as explicitly set forth in this Agreement, the Parties hereby acknowledge and agree that the terms and conditions of the Second Amended Non-Disclosure Agreement are hereby made part of this Agreement, *mutatis mutandis*, as if they were contained in this Agreement, except that each reference to "BSE" shall be deemed to be a reference to "Solar Partners."
2. This Agreement and all obligations hereunder shall be effective as of February 5, 2009 and shall terminate five years from such date or earlier upon the mutual written consent of the Parties (the "Effective Date").
3. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
4. Any notice or communication given pursuant to this Agreement shall be in writing and:

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

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

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

If to Solar Partners: Solar Partners I, LLC
 c/o BrightSource Energy, Inc.
 1999 Harrison Street, Suite 2150
 Oakland, CA 94612
 Attn: Senior Vice President, Project Development
 Telephone: (510) 550-8161
 Facsimile: (510) 550-8165

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

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

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

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

7. This Agreement may not be modified except by a written agreement executed by all Parties.

8. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to

the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.

9. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
10. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
11. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
12. This Agreement may be signed in counterparts, each of which shall be deemed an original.

SOLAR PARTNERS I, LLC,
A Delaware limited liability company

By: 

Thomas P. Doyle
Senior Vice President,
Project Development

Date: March 26, 2009

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

A California corporation.

By: 

Stuart Hemphill
Vice President, Renewable and
Alternative Power

Date: March 23, 2009

Appendix 1

Second Amended Non-Disclosure Agreement

See attached.

SECOND AMENDED NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

BrightSource Energy, Inc.

SOUTHERN CALIFORNIA EDISON COMPANY ("SCE"), a California corporation, and BrightSource Energy, Inc. ("BSE"), a Delaware corporation, hereby enter into this Second Amended Non-Disclosure Agreement ("Agreement").

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

RECITALS

- A. SCE initiated a request for proposals ("RFP") to supply energy and associated Green Attributes, Capacity Attributes and Resource Adequacy Benefits from eligible renewable resources ("ERRs") on March 12, 2007, with a goal of negotiating and executing power purchase agreements with ERRs whose proposals are selected pursuant to the RFP.
- B. BSE desires to submit a proposal in response to the RFP.
- C. The Parties desire to keep confidential any confidential or proprietary information disclosed by BSE to SCE as part of BSE's submission of a proposal in response to the RFP (the "Proposal"), or any confidential or proprietary information that may be disclosed by SCE to BSE as part of discussions or negotiations with BSE concerning BSE's Proposal.
- D. The Parties executed an original Non-Disclosure Agreement effective June 21, 2007. After executing the original Non-Disclosure Agreement, BSE discovered the need to review Confidential Information, as defined herein, with one or more outside experts, who could be considered consultants or subcontractors, and such review was potentially not covered under the original Non-Disclosure Agreement. SCE is agreeable to such disclosures by BSE on the terms set forth herein. Accordingly, on September 12, 2008, the Parties executed an Amended Non-Disclosure Agreement, which superseded the Original Non-Disclosure Agreement.
- E. After executing the Amended Non-Disclosure Agreement, BSE's scheduling management consultant sought clarification of the time period covered by the Amended Non-Disclosure Agreement. BSE and SCE agreed to amend the Amended Non-Disclosure Agreement and the parties executed this Second Amended Non-Disclosure

Agreement, which supersedes the Amended Non-Disclosure Agreement as of the Effective Date set forth below.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

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

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

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

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

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

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

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

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

or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations.

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

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

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

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

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

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

If to BSE: BrightSource Energy, Inc.
 1999 Harrison Street, Suite 2150
 Oakland, CA 94612
 Attn: Senior Vice President, Project Development
 Telephone: (510) 550-8161
 Facsimile: (510) 550-8165

With copy to:

BrightSource Energy, Inc.
1999 Harrison Street, Suite 2150
Oakland, CA 94612
Attn: General Counsel
Telephone: (510) 550-8161
Facsimile: (510) 550-8165

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

This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
12. Any waiver of the requirements and provisions of this Agreement shall be in writing.

The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
13. This Agreement may not be modified except by a written agreement executed by both Parties.
14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
16. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
17. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
18. This Agreement may be signed in counterparts, each of which shall be deemed an original.

BrightSource Energy, Inc.

A Delaware corporation.

By:



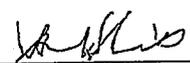
John Woolard
President and CEO

Date: October, 2008

SOUTHERN CALIFORNIA EDISON
COMPANY,

A California corporation.

By:



Stuart R. Hemphill
Vice President
Renewable and Alternative Power

Date: 10/31/08

EXHIBIT B

Renewable Power Purchase and Sale Agreement

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

First Amendment to Renewable Power Purchase and Sale Agreement

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

First Amendment to Renewable Power Purchase and Sale Agreement