

2013 LCR PRO FORMA

RESOURCE ADEQUACY PURCHASE AGREEMENT (POWER PURCHASE TOLLING OPTION)

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

***[SELLER]***

***[Date]***

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**Resource Adequacy Purchase Agreement (Power Purchase Tolling Option)**

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**RESOURCE ADEQUACY PURCHASE AGREEMENT (POWER PURCHASE TOLLING OPTION)**

**between**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**and**

***[SELLER]***

This Resource Adequacy Purchase Agreement (Power Purchase Tolling Option), together with the Appendices (collectively, the “Agreement”) is made and entered into as of this *[\_\_\_\_]* day of *[Month]*, *[Year]* (“Effective Date”) by **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation (“SCE” or “Buyer”), and *[****SELLER****]*, a *[Seller’s business registration]* (“*[Seller’s Shortname]*” or “Seller”). SCE and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”. All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

# RECITALS

This Agreement is made with reference to the following facts, among others:

1. SCE is an investor-owned electric utility serving customers in central and southern California.
2. Seller is proposing to construct and own the Project located in *[insert description of location]*, and considered to be within the area described as the *[Western Los Angeles basin or Moorpark sub-area]* in CPUC Decision 13-02-015 as a *[Western LA Basin Project or Moorpark Sub-Area Project]*.
3. Seller wishes to sell and deliver exclusively to SCE, and SCE wishes to purchase, the Product under the conditions set forth in this Agreement.

# AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

# ARTICLE ONE

# Purchase and Sale of Product

1. Purchase and Sale of Product.

During the Delivery Period, Seller shall deliver and sell, and SCE shall purchase and receive, the Resource Adequacy Benefits associated with the Project, subject to the terms and conditions of this Agreement. During the Delivery Period, Seller shall not substitute or purchase any Resource Adequacy Benefits from any other generating resource or from the market for delivery hereunder. In addition, Seller shall, for any Contract Year, have the option of delivering and selling to SCE, and upon Seller’s exercise of such option SCE shall purchase and receive, the Capacity, Energy, Ancillary Services Capacity and Associated Ancillary Services Energy from the Project on the terms and conditions of this Agreement (the “Energy Put Option”). Seller may exercise its Energy Put Option for any Contract Year by delivering Notice of such exercise to SCE at least two years before the start of such Contract Year, but in no event more than three years before the start of any Contract Year, provided that Seller must exercise its Energy Put Option for the first Contract Year at least two years (and no more than three years) before the Expected Initial Delivery Date as of the Effective Date, and its Energy Put Option for the second Contract Year at least one year (and no more than two years) before the Expected Initial Delivery Date as of the Effective Date. Upon exercise of such option, the Capacity, Energy, Ancillary Services Capacity and Associated Ancillary Services Energy from the Project shall be included in the Product delivered and sold by Seller to SCE under this Agreement for such Contract Year, and Seller shall not substitute or purchase any Capacity, Energy, Ancillary Services, or Ancillary Service Capacity from any other generating resource or from the market for delivery hereunder.

1. Resource Adequacy Benefits. During the Delivery Period, Seller grants, pledges, assigns and otherwise commits to SCE the full Capacity of the Project in order for SCE to meet its RA Compliance Obligations under any Resource Adequacy Rulings. Seller represents, warrants and covenants to SCE that Seller (i) has not used, granted, pledged, assigned or otherwise committed, and (ii) will not use, grant, pledge, assign or otherwise commit any Capacity of any Generating Unit to meet the RA Compliance Obligation of, or confer Resource Adequacy Benefits upon, any entity other than SCE during the Delivery Period, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SCE. Notwithstanding anything to the contrary in this Agreement, the Parties shall take all actions that may be necessary to effect the use of the Resource Adequacy Benefits of the Project in accordance with the preceding sentence throughout the Delivery Period; *provided, however*, that no such action shall require Seller to modify the Project or to operate the Project in a manner that is inconsistent with the Operating Restrictions. Such action shall include: (i) amending this Agreement and complying with all current and future Tariff provisions and decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties; (ii) ensuring that the Project’s Capacity is certified by the CAISO as being fully deliverable as of the Initial Delivery Datefor the purposes of counting all of the Contract Capacity towards SCE’s RA Compliance Obligations; and (iii) executing all documents or instruments; but excluding, in each case, any action which is inconsistent with any Applicable Law or any permit applicable to the Project.
2. Capacity. During any Put Delivery Period, SCE shall have the exclusive right to the Capacity from the Project.
3. Energy. During any Put Delivery Period, except for Energy resulting from a Non-SCE Dispatch, Seller dedicates the Energy of the Project to SCE, and SCE shall have the exclusive rights to all Energy produced by the Project, including pursuant to a forward schedule or an Imbalance Energy instruction from the CAISO.
4. Ancillary Services. During any Put Delivery Period, SCE shall have the exclusive rights to all Ancillary Services Capacity and Associated Ancillary Services Energy from the Project, subject only to the limitations set forth in Appendix 1.02.
5. Ownership. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term.
6. Exclusive Rights. During the Delivery Period (and, during any Put Delivery Period, except only as a result of a Non-SCE Dispatch), SCE shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, sale or marketing of the Product.
7. Generating Units.
8. CAISO Test Results. Seller shall provide all CAISO Certification test results for each Generating Unit within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term.
9. Delivery of Energy. During any Put Delivery Period, Energy from each Generating Unit shall be delivered to the Energy Delivery Point.
10. Station Use. The Generating Unit(s) will serve Station Use. The applicable amount and nature of load shall be as set forth in Appendix 1.03.
11. Generating Unit(s)’ Test Parameters. For purposes of the Initial Commercial Operation Test and any Contract Capacity & Ancillary Services Test, the following test parameters (“Test Parameters”) shall apply.

Dry Bulb Temperature: *[xxx]* degrees Fahrenheit

Relative Humidity: *[xx.x%]*

Barometric Pressure: *[xx.xxx]* psia

Power Factor: *[x.xx]* (lagging)

The Test Parameters shall be determined using the ASHRAE two percent (2%) summer design criteria for each such parameter at the Site.

1. Location of Site. *[Project Address]*, as further described in Appendix 1.03.
2. Delivery Points.
3. Energy Delivery Point. The Energy Delivery Point shall be the *[description],* as specified in Appendix 1.03(a). During any RA Delivery Period, Seller shall be responsible for all charges and penalties associated with the operation of the Project and transmission of Energy from the Project. During any Put Delivery Period, except as set forth in Sections 19.03 through 19.07, inclusive, Seller shall be responsible for all charges and penalties associated with the operation of the Project and transmission of Energy up to and including the Energy Delivery Point, and SCE shall be responsible for all charges and penalties associated with receiving and transmitting Energy from the Energy Delivery Point. During any Put Delivery Period, title, possession, and risk of loss related to Energy shall transfer from Seller to SCE at the Energy Delivery Point.
4. Gas Delivery Point. The Gas Delivery Point shall be the SoCalGas Billing Meter, as specified in Appendix 1.03(b).
5. Point of Interconnection. The Point of Interconnection is *[insert substation name and location]*, as specified in Appendix 1.03(a).
6. Interconnection Queue Position. *[Number(s) to be inserted]*

# ARTICLE TWO

# TERM; CONDITIONS PRECEDENT AND DELIVERY PERIOD

1. Term.

The “Term” of this Agreement shall commence upon the Effective Date, and shall continue until the expiration of the Delivery Period.

1. Approval Date; Termination Related to Failure to Timely Obtain Regulatory Approval.

The “Approval Date” is the date that all the following conditions are satisfied:

1. Final CPUC Approval. Final CPUC Approval shall have been obtained. SCE shall seek Final CPUC Approval expeditiously and in good faith. As requested by SCE, Seller shall use commercially reasonable efforts to support SCE in obtaining Final CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for Final CPUC Approval with conditions or modifications unacceptable to SCE.
2. Delivery of Documents. Seller shall have delivered to SCE all documents and information required under this Agreement to be delivered prior to the Approval Date.

Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if Final 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 Final 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 Final CPUC Approval.

If either Party exercises its termination right pursuant to this Section 2.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Delivery Date Security provided to SCE.

1. Expected Initial Delivery Date.

Subject to adjustment made under Section 2.07(b), the Expected Initial Delivery Date for the Project is *[Date]*.

1. Delivery Period.

The “Delivery Period” shall commence at 12:01 a.m. on the date that the Project achieves its Initial Delivery Date, and shall continue until the earlier of: (i) midnight on the date that is *[number of years]* years after the Expected Initial Delivery Date, (ii) an Early Termination Date designated in accordance with Section 3.03, or (iii) the date this Agreement is otherwise terminated in accordance with its terms.

The “Initial Delivery Date” shall be the first day of the first full month after all of the following conditions have been satisfied for the Project:

1. Seller has completed, to SCE’s satisfaction, Seller’s obligations set forth in Sections 5.01(a) through 5.01(g) (and Section 5.01(h), if Seller has exercised its Energy Put Option for the first Contract Year), inclusive, in order to bring the Project into full operation as contemplated by this Agreement;
2. Each Generating Unit has achieved Commercial Operation;
3. Seller has received its Market-Based Rate Authority to sell the Product to SCE under the terms of this Agreement, operate the Project, and sell energy from the Project, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;
4. Seller has executed a Participating Generator Agreement, Meter Service Agreement For CAISO Metered Entities, and any other forms or agreements required by the CAISO with respect to the Project (and delivered true and complete copies of all such forms and agreements to SCE);
5. If Seller has exercised its Energy Put Option for the first Contract Year, Seller has taken all actions and executed all documents and instruments, including the Gas Transportation Contract, required to authorize SCE to act as Scheduling Coordinator, Fuel Manager and Contracted Marketer for the Project under this Agreement, and SCE is authorized to act as Scheduling Coordinator, Fuel Manager and Contracted Marketer;
6. Seller has entered into and complied in all material respects with all obligations under all interconnection agreements required to enable parallel operation of the Project with the PTO’s electric system and CAISO Grid;
7. Seller has deposited with SCE the applicable Performance Assurance pursuant to Section 13.02(c)(i);
8. Seller has executed and delivered to SCE all documents or instruments required under or requested pursuant to Article Thirteen;
9. A fully functioning SoCalGas Billing Meter has been installed and is working at the Project;
10. SCE shall have obtained or waived Final CPUC Approval;
11. Seller has provided SCE with certification from an independent, non-Affiliate California registered professional mechanical engineer, that (i) Seller has designed and built the Project to have a thirty (30) year design life in accordance with Accepted Electrical Practices, and (ii) the design and construction of the Project was carried out by the original equipment manufacturer or other competent organization;
12. Seller has delivered to SCE all insurance documents required under Section 30.15;
13. Seller has obtained CAISO Certification for each Generating Unit;
14. Seller has paid to SCE the full amount of the Excess Network Upgrade Costs, if applicable;
15. Seller has taken all actions necessary to ensure that the Project is fully deliverable in an amount equal to the Contract Capacity, as determined by the CAISO, for RA Compliance Obligations, and Seller has delivered to SCE a certification or other documentation from the CAISO that evidences that the Project is fully deliverable for the purposes of counting all of the Contract Capacity towards SCE’s RA Compliance Obligations; and
16. Seller has obtained a Unit NQC and Unit EFC for each Generating Unit.

The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of that Initial Delivery Date, including without limitation providing Outage Schedules and Supply Plans in advance of the Initial Delivery Date and, if Seller has exercised its Energy Put Option for the first Contract Year, Seller delivering an Availability Notice for the Initial Delivery Date, and SCE delivering a Dispatch Notice and nominating and scheduling the Natural Gas Requirements for the Initial Delivery Date. The Parties shall cooperate with each other in order for SCE to be able to utilize the Product beginning on the Initial Delivery Date and, if Seller has not exercised its Energy Put Option for the first Contract Year, Seller agrees to cause each Generating Unit’s SC to cooperate in order to achieve the same.

The Parties further agree that, in order for the Parties to transition between RA Delivery Periods and Put Delivery Periods, the Parties may have to perform certain of their obligations in advance of such transition, including without limitation providing Supply Plans, delivering Availability Notices and Dispatch Notices and nominating and scheduling the Natural Gas Requirements. The Parties shall cooperate with each other in order for SCE to be able to utilize the Product between such transitions, and, if applicable, Seller agrees to cause each Generating Unit’s SC and Contracted Marketer to cooperate in order to achieve the same.

Notwithstanding any other provision in this Agreement, the Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not be later than *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*.

1. Put Delivery Period; RA Delivery Period.

Any portion of the Delivery Period for which Seller has exercised its Energy Put Option shall be a “Put Delivery Period,” and any portion of the Delivery Period for which Seller has not exercised its Energy Put Option shall be a “RA Delivery Period.” During any RA Delivery Period, Seller shall have the right to dispatch and sell the Capacity, Energy, Ancillary Services Capacity and Associated Ancillary Services Energy from the Project to any third party.

1. Early Initial Delivery Date.

If the Project (or any portion thereof) reaches Commercial Operation prior to its Expected Initial Delivery Date, Seller may (regardless of whether it has exercised its Put Exercise Option for the first Contract Year), dispatch and sell the output of such Generating Unit(s) to third parties prior to its Expected Initial Delivery Date; *provided*, SCE shall have no obligation to purchase such output nor be obligated to act as Scheduling Coordinator, Fuel Manager, or Contracted Marketer under this Agreement prior to the Initial Delivery Date. Seller shall have the right to all revenues generated from such sale, and will be responsible for any costs, charges, fees, fines, or penalties associated with such sale. Once the Project reaches its Initial Delivery Date, then Seller shall not (but without prejudice to Section 7.02) provide, convey or market the Product (including any Resource Adequacy Benefits associated with the Project) associated with the applicable portion of the Delivery Period to any third party.

1. Delayed Initial Delivery Date.
2. Daily Delay Damages. If Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date, Seller shall owe and pay to SCE the applicable Daily Delay Damages for each day of delay beyond the Expected Initial Delivery Date up to the number of remaining days until *[Insert date that is three hundred sixty-five (365) days after the Expected Initial Delivery Date]*. SCE shall be entitled to recover the Daily Delay Damages owed by Seller by drawing on and/or retaining any Delivery Date Security.
3. Delays Due to Force Majeure. Subject to Section 3.02(f) and Seller’s compliance with its obligations as the Claiming Party under Section 23.02, if Seller has not satisfied the conditions set forth in Section 2.04 for the Initial Delivery Date of the Project by the Expected Initial Delivery Date due to Force Majeure, then the Expected Initial Delivery Date will be extended on a day-for-day basis for the duration of the Force Majeure.
4. No Liability of SCE.

SCE shall have no liability to Seller, regardless of cause (including any act or omission of SCE, including as buyer under this Agreement or as a PTO) for (a) any delay or failure by Seller to achieve the Initial Delivery Date by the Expected Initial Delivery Date, (b) any costs or damages incurred by Seller as a result thereof or any reduction in Seller’s Monthly Capacity Payments resulting from any delay in achieving the Initial Delivery Date by the Expected Initial Delivery Date, or (c) a reduction in the Term or the Delivery Period.

1. Seller’s Queue Position .

Seller must not withdraw the Interconnection Queue Position identified in Section 1.03(d) or assign or transfer that Interconnection Queue Position to any entity or for the benefit of any other agreement other than this Agreement without SCE’s prior written consent.

# ARTICLE THREE

# EVENTS OF DEFAULT; REMEDIES; TERMINATION

1. Events of Default.

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

1. The failure to make, when due, any payment required to be made to the other Party pursuant to this Agreement, if such failure is not remedied within three (3) Business Days after written Notice of such failure is given by the Non-Defaulting Party;
2. 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;
3. The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for any failure to obtain all Required Permits on or before the Required Permit Date), if such failure is not remedied within five (5) Business Days of receipt of Notice; or
4. Such Party becomes Bankrupt.
5. Seller Events of Default.

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

1. Seller fails to comply with any of its affirmative covenants under Section 24.03 or its negative covenants under Section 24.04, unless such failure to comply is cured within a period specifically provided elsewhere in this Agreement applicable to such failure to comply;
2. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without SCE’s written consent, which consent may be granted or withheld in SCE’s sole discretion;
3. Seller fails to comply with its obligations under Article Thirteen, including failing to post or maintain the Delivery Date Security or applicable Performance Assurance, within three (3) Business Days after SCE provides Notice of the failure;
4. Seller makes any material misrepresentation or omission in any report, including status and metering report, or the Milestone Schedule or any Availability Notice (including the log, records and reports required under Sections 8.01(b), 8.01(c), 8.01(d), 20.01, 22.01, and 24.03(k), Appendix 6.01(A), Appendix 6.01(B) and Appendix 20.01) required to be made or furnished by Seller pursuant to this Agreement;
5. Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, to any party other than SCE or the CAISO during the applicable portion of the Delivery Period;
6. Seller fails to achieve the Initial Delivery Date for the Project by *[Date that is three hundred sixty-five days after the Expected Initial Delivery Date]*, whether due to Force Majeure or otherwise;
7. Seller starts-up or operates, or permits or causes any third party to start-up or operate, any Generating Unit other than as specifically permitted under Sections 2.05, 2.06, Article Seven, or Article Eighteen during the Delivery Period;
8. A termination of, or cessation of service under, any agreement necessary for Seller to (i) interconnect the Project to the PTO’s electric system, (ii) transmit the electric energy on the PTO’s electric system, (iii) comply with the CAISO Tariff; *provided*, if termination of, or cessation of service under, any such agreement is not due to the fault of Seller, Seller shall have ten (10) days from such termination or cessation to cure such default;
9. The stock, equity ownership interest in Seller or assets of Seller is directly or indirectly pledged or assigned, or caused or permitted to be pledged or assigned, as collateral to any party other than to Lender without SCE’s prior written consent, which consent may be granted or withheld in SCE’s reasonable discretion;
10. Seller fails to maintain its PGA or MSA during the Delivery Period, or its Gas Transportation Contract during any Put Delivery Period, and such failure is not cured within ten (10) days of termination of the PGA, Gas Transportation Contract or MSA, as applicable; *provided*, that during any Put Delivery Period the Generating Unit(s) shall be deemed not available for purposes of Section 10.01 from the first day of the failure until such PGA, Gas Transportation Contract or MSA is fully reinstated or replaced;
11. By the Required Permit Date, Seller fails to obtain all of the Required Permits, or all applicable appeal periods for such approvals or permits have not expired;
12. Seller fails to comply with any of its obligations under Sections 8.02(b), 8.02(c) or 8.02(f);
13. Seller fails to comply with any of its obligations under Sections 8.02(d);
14. Subject to the terms of a Collateral Assignment Agreement, the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments relating to indebtedness for borrowed money, which results in the indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable;
15. Seller fails to comply with its obligations under Section 16.02;
16. Except as permitted under Article 14, Seller does not own or otherwise have control of the Project;
17. Seller intentionally or knowingly delivers, or attempts to deliver, Product for sale under this Agreement that was not in fact associated with or generated by the Project;
18. Seller removes from the Site equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from SCE;
19. Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Resource Adequacy Benefits for SCE’s sole benefit as specified under Section 1.01(a); or
20. Seller violates SCE’s Generating Unit Removal Right by marketing, dispatching, providing, or conveying output from the affected Generating Unit(s).
21. Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right, by delivery of Notice to the Defaulting Party, to (a) designate a day, no earlier than the day such Notice is effective and no later than twenty (20) days after such Notice is effective, as an “Early Termination Date,” and to terminate this Agreement as of the Early Termination Date, (b) accelerate all amounts owing between the Parties under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, and (d) suspend performance pending termination of this Agreement. The Non-Defaulting Party shall also have the right to pursue any other remedies available at law or in equity, including, where appropriate, specific performance or injunctive relief to the extent permitted under Article Twenty-Seven.

1. Calculation of Termination Payment.

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the “Termination Payment” in accordance with this Section 3.04.

1. Termination Payment Prior to Initial Delivery Date. If the Early Termination Date occurs before the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(a).
2. If Seller is the Defaulting Party, then the Termination Payment shall be owed to SCE and shall be equal to the entire Delivery Date Security amount. SCE shall be entitled to immediately retain for its own benefit those funds held as Delivery Date Security, and any amount of Delivery Date Security that Seller has not yet posted with SCE will be immediately due and payable by Seller to SCE. There will be no amounts owed to Seller. The Parties agree that SCE’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(i) are a reasonable approximation of SCE’s harm or loss.
3. If SCE is the Defaulting Party, then the Termination Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Project, less the fair market value (determined in a commercially reasonable manner) of (A) all the Project’s assets individually, or (B) the entire Project, whichever is greater, regardless of whether or not any Project asset or the entire Project is actually sold or disposed of; *provided*, in no case shall such Termination Payment be greater than fifty percent (50%) of the present value (as of the Early Termination Date, and calculated using the Interest Rate as of the Early Termination Date) of the total expected Monthly Energy Capacity Payments for the entire Term under this Agreement assuming that (A) the Initial Delivery Date would have occurred on its Expected Initial Delivery Date, (B) Seller exercised its Energy Put Option for each and every Contract Year, and (C) the Monthly Energy Capacity Payments are not subject to any reduction, change or adjustment under Article Ten, or be less than zero dollars ($0). There will be no amount owed to SCE. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Initial Delivery Date caused by SCE’s default would be difficult or impossible to determine and that the damages set forth in this Section 3.04(a)(ii) are a reasonable approximation of Seller’s harm or loss.
4. Termination Payment After the Initial Delivery Date Occurs. If the Early Termination Date occurs after the Initial Delivery Date, then the Termination Payment shall be calculated in accordance with this Section 3.04(b). The Termination Payment shall equal the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, including a Forward Settlement Amount (if any), less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

In addition, if SCE is the Non-Defaulting Party and SCE reasonably expects to incur monetary penalties or fines from the CPUC or the CAISO (or any other Governmental Authority having jurisdiction) because SCE will not be able to include the Contract Capacity in its then applicable Compliance Showing as a result of Seller’s Event of Default, then SCE may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties or fines are finally ascertained. SCE shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SCE be required to use or change the utilization of its owned or controlled assets or market positions to minimize the fines and penalties. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Agreement and shall continue until after those penalties or fines are finally ascertained.

1. Notice of Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment. The Notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

If the Termination Payment is owed to the Non-Defaulting Party, then the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. If the Termination Payment is owed to the 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 Twenty-Seven.

1. Limitation on Seller’s Ability to Make or Agree to Third Party Sales from the Project after Early Termination Date.

If the Agreement is terminated by SCE prior to the Initial Delivery Date due to Seller’s Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Resource Adequacy Benefits associated with or attributable to a Generating Unit or the Project to a party other than SCE for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Resource Adequacy Benefits, or entering into the agreement to sell, market or deliver such Resource Adequacy Benefits to a party other than SCE, Seller or Seller’s Affiliates provides SCE with a written offer to sell the Resource Adequacy Benefits which provides SCE the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement or the terms and conditions to which the third party agreed, and SCE fails to accept such offer within forty-five (45) days of SCE’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Project, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 3.06 apply, unless the transferee agrees to be bound by the terms set forth in this Section 3.06 pursuant to a written agreement approved by SCE.

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 3.06.

1. Effect of Termination.

Termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination.

# ARTICLE FOUR

# TRANSMISSION

1. Interconnection Studies.

Seller represents and warrants that, as of the Effective Date, Seller has provided SCE with true and correct, up-to-date copies of all of the Interconnection Studies to enable delivery of the Generating Unit(s)’ output to the Point of Interconnection pursuant to Applicable Law. Seller shall be responsible for all fees and costs associated with the following:

1. Obtaining all Interconnection Studies;
2. Maintaining, complying with and performing Seller’s obligations under the interconnection agreement and related documents throughout the Delivery Period;
3. Funding for any Network Upgrades associated with or attributable to the Project (any refund of such fees and costs will be consistent with the Tariff);
4. Any Interconnection Facilities that are installed for the purpose of interconnecting the Project with existing transmission or distribution systems; and
5. All costs (including interconnection costs and transmission losses) arising from, relating to or associated with any WDAT interconnection agreement between Seller and SCE under which Energy from the Project is transmitted to the CAISO Grid.
6. Termination Rights of SCE.

SCE has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given to Seller, on or before the date that is sixty (60) days after Seller provides to SCE the results of any Interconnection Study or the interconnection agreement tendered to Seller by the PTO if:

1. Such Interconnection Study or agreement as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of transmission upgrades or new transmission facilities to SCE, or any PTO under the jurisdiction of the CAISO, including costs reimbursed by SCE, or any PTO under the jurisdiction of the CAISO, to Seller (“Aggregate Network Upgrade Costs”), may in the aggregate exceed *[dollar amount text]* dollars ($*[Number]*) (“Network Upgrades Cap”), irrespective of any subsequent amendments of such Interconnection Study or agreement or any contingencies or assumptions upon which such Interconnection Study or agreement is based; or *{SCE Note: Monetary threshold to be based upon transmission-related costs allocated to the Project that SCE would incur as estimated in the most recent Interconnection Study.}*
2. SCE must procure transmission service from any other participating transmission owner to allow SCE to Schedule electric energy from the Project and the cost for such transmission service is not reimbursed or paid by Seller.

Notwithstanding anything to the contrary in this Section 4.02, SCE shall have no right to terminate this Agreement under this Section 4.02, if Seller, concurrently with its provision of the relevant Interconnection Study or agreement pursuant to Section 6.02(a), irrevocably agrees that Seller shall owe to SCE (i) the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Costs”), and (ii) any costs for transmission services specified in Section 4.02; *provided*, with respect to clause (i), and solely for the purpose of calculating Excess Network Upgrade Costs, Aggregate Network Upgrade Costs shall be based on the latest interconnection agreement (including any amendments or modifications thereto) tendered to Seller by the PTO. If Seller elects to pay, without reimbursement, for the Excess Network Upgrade Costs pursuant to this Section 4.02, in no event shall Seller have any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights in connection with the development of the Project or the delivery of Product to SCE pursuant to this Agreement.

If SCE exercises its termination right pursuant to this Section 4.02, no Termination Payment will be due or owing by either Party and Seller will be entitled to a return of any Delivery Date Security provided to SCE.

1. Acknowledgment.

Seller acknowledges and agrees that nothing in this Article Four is intended to abrogate, amend or modify the terms of any other agreement between it and SCE, including without limitation, the interconnection agreement, and that no breach under such other agreement shall excuse a Party’s nonperformance under this Agreement, unless the breach of such other agreement is also an Event of Default under this Agreement.

# ARTICLE Five

# design and construction of generating units

1. Seller’s Obligations.

At no cost to SCE, Seller shall:

1. Design and construct, or refurbish the Project as required for Seller to perform its obligations under this Agreement;
2. Within *[number] [#]* days prior to the Expected Initial Delivery Date, Seller shall file all applications or other appropriate requests to acquire and maintain all permits, licenses, certifications and approvals necessary for the construction or refurbishment, operation and maintenance of the Project (the “Required Permits”), including (a) permits to construct from the applicable Air Pollution Control District, or a Site Certification from the California Energy Commission (pursuant to California Public Resources Code Sections 25500-25543), as applicable, and (b) Emission Reduction Credits and Marketable Emission Trading Credits (including any PM10, Sox and CO emission offsets pursuant to South Coast Air Quality Management District Rule 1309.1 – Priority Reserve as amended on September 8, 2006), and obtain all Required Permits on or before *[Date]* (the “Required Permit Date”);
3. As applicable, complete all environmental impact assessments or studies conducted by or for Governmental Authorities pursuant to regulatory programs approved and certified under the California Environmental Quality Act, or environmental impact statements or studies conducted pursuant to the National Environmental Policy Act including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;
4. As required to achieve Commercial Operation for each Generating Unit, furnish and install all Protective Apparatus as SCE reasonably determines to be necessary for proper and safe operation of the Project in parallel with the PTO’s electric system or CAISO Grid;
5. Pay all costs related to acquiring rights of way and upgrades to transportation facilities and construction of facilities required to interconnect each Generating Unit to the natural gas transportation system, if applicable, consistent with all standards and provisions set forth by the FERC, CPUC, California Department of Transportation or any other applicable Governmental Authority and the interconnecting gas transportation owner, or other utility services described in Section 6.03(c);
6. Provide to SCE, prior to commencement of any construction activities on the Site, a report from an independent engineer (acceptable to both SCE and Seller) certifying that Seller has a written plan for the safe construction and operation of the Project in accordance with Accepted Electrical Practices;
7. Throughout the Delivery Period, maintain all permits, licenses, certifications and approvals necessary for the operation and maintenance of the Project; and
8. At least thirty (30) days prior to the start of any Put Delivery Period, Seller shall provide a completed Master File for the Project to SCE (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information).
9. Changes in Operational Characteristics.

Seller shall provide to SCE Notice of any changes in the operational characteristics of the Project, for SCE’s review as far in advance as practicable, but in no event less than thirty (30) days before the changes are to be made. Seller acknowledges that provision of Notice under this Section 5.02 is for SCE’s information only and that by receiving such Notice, SCE makes no representation as to the economic or technical feasibility, operational capacity or reliability of any changes in the operational characteristics of the Project.

1. EPC Contractor.

Seller shall provide SCE with Notice of the name and address of Seller’s EPC Contractor on the later of the Effective Date or the first (1st) Business Day after Seller enters into a contract with an EPC Contractor. If Seller does not have an EPC Contractor selected by the Approval Date, Seller shall provide SCE with a shortlist of candidates by the Approval Date.

# ARTICLE SIX

# CONSTRUCTION PERIOD AND MILESTONES

1. Milestone Schedule.

In order to meet the Expected Initial Delivery Date, Seller shall use reasonable efforts during the construction period to meet the various Project related milestones set forth in Appendix 6.01(A) (“Milestone Schedule”) and avoid or minimize any delays in meeting such Milestone Schedule. No later than the tenth (10th) day of each month while the Project has not yet met its Initial Delivery Date, or within five (5) days of SCE’s request, Seller shall deliver to SCE a monthly progress report, substantially in the form set forth in Appendix 6.01(B) (“Construction Report”), describing its progress in relation to the Milestone Schedule, including projected time to completion of any milestones, for each Generating Unit and the Project. Seller shall include in any Construction Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such documents as may be reasonably requested by SCE. In addition, Seller shall advise SCE, as soon as reasonably practicable, of any problems or issues of which Seller is aware which could materially impact its ability to meet the Milestone Schedule.

1. Provision of Information.

During the Term, Seller shall promptly provide SCE copies of:

1. Within ten (10) Business Days of receipt thereof, any Interconnection Study or the interconnection agreement tendered to Seller by the PTO and, concurrently with the provision of the first Interconnection Study or interconnection agreement tendered to Seller by the PTO that may give rise to a termination right of SCE under Section 4.02, Seller shall also provide SCE a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Costs pursuant to Section 4.02, with a failure to provide such an election deemed to be an election not to exercise such rights;
2. All agreements with providers of engineering, procurement, or construction services for the Project and all amendments thereto, including any EPC Contract (which may be redacted by Seller to eliminate any portions reasonably believed by Seller to contain confidential information);
3. Any reports, studies, or assessments done for Seller by an independent engineer; and
4. No later than twenty (20) days after each semi-annual period ending on June 30th and December 31st, a report listing all WMDVBEs that supplied goods or services to Seller during such period, including any certifications or other documentation of such WMDVBEs’ status as such and the aggregate amount paid to WMDVBEs during such period.
5. SCE has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 6.02(d).
6. Seller shall make reasonable efforts to accommodate requests by the CPUC (or by SCE in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 6.02(d).
7. Inspection Rights.

SCE shall have the right at any time during the Term to enter onto the Site during normal business hours on any Business Day to inspect the Project and otherwise inspect or audit Seller’s EPC Contracts and its books and records in order to verify Seller’s compliance with the Milestone Schedule and other obligations under this Agreement. Seller shall, or shall cause its EPC Contractors to, provide SCE with access to the Site and all applicable documents and records in order to permit SCE to determine whether:

1. Seller has obtained and maintained all Required Permits, and that such Required Permits do not contain Permit Requirements that might restrict SCE’s ability to dispatch the Project as provided for in this Agreement;
2. All contracts described in Section 6.02(a) and 6.02(b) have been entered into and become effective on a timely basis and Seller is not in default thereunder; and
3. All contracts or other arrangements necessary to interconnect the Project (including transmission arrangements as contemplated in Article Four, electrical, gas, water supply and waste disposal) have been entered into and become effective on a timely basis pursuant to the Milestone Schedule and Seller is not in default thereunder.

# ARTICLE SEVEN

# COMMISSIONING AND TESTING

1. Initial Commercial Operation Test.

At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall schedule and complete an Initial Commercial Operation Test for each Generating Unit. Such Initial Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation of each Generating Unit by the Expected Initial Delivery Date and SCE will reasonably cooperate with Seller to meet such deadline.

The Initial Commercial Operation Test shall establish the Contract Capacity for purposes of calculating the Monthly Capacity Payment, and Appendix 1.02 and Appendix 9.02 shall be deemed to be amended to reflect the Contract Capacity certified during such test by SCE test personnel.

1. Periodic Testing.
2. Seller Testing. Seller shall schedule and complete any RA Capacity Qualification Tests required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws. Seller may also elect to test any Generating Unit at any time, subject to Section 7.03.
3. SCE RA Capacity Qualification Testing. Once per each Contract Year during a RA Delivery Period (after the initial Contract Year), upon SCE’s request, Seller shall, or shall cause each Generating Unit’s SC to, schedule and complete, at Seller’s cost, an RA Capacity Qualification Test for each Generating Unit and provide all information required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for each Generating Unit to obtain an updated Unit NQC and Unit EFC. In connection with such a request, SCE may request that Seller shall cause each Generating Unit’s SC to propose to the CAISO that the Unit NQC or Unit EFC for any Generating Unit be changed. Seller agrees that in such a case Seller shall, or shall cause each Generating Unit’s SC to, take all actions required under the Tariff to obtain a new Unit NQC and Unit EFC for such Generating Units, including providing any documentation necessary to justify and support such request in accordance with the Tariff.
4. SCE Contract Capacity and Ancillary Services Testing. Once per each Contract Year during a Put Delivery Period (after the initial Contract Year), Seller shall, upon SCE’s request, schedule and complete a Contract Capacity & Ancillary Services Test in accordance with Appendix 7. This test shall be deemed a Buyer Dispatched Test.
5. No Adjustment to Contract Capacity. Notwithstanding any other provision in this Agreement, the Contract Capacity shall not be adjusted to conform to the results of any RA Capacity Qualification Test or Contract Capacity & Ancillary Services Test.
6. Testing Costs.
7. RA Capacity Qualification Tests. Seller is responsible for all costs associated with all RA Capacity Qualification Tests conducted pursuant to this Article Seven and all costs associated with providing any information related to all RA Capacity Qualification Tests.
8. Buyer Dispatched Test. During a Put Delivery Period, if Seller testing is conducted during a Settlement Interval in which Seller receives a Dispatch Notice for the Generating Unit(s) being tested, but only if such testing does not interfere with the Generating Unit(s) ability to meet the applicable Dispatch Notice, or SCE orders Seller to initiate such testing (each, a “Buyer Dispatched Test”), Seller shall not (other than as set forth in Article Sixteen) be obligated to pay for all Gas Costs relating to such Buyer Dispatched Test, and Energy shall be treated as dispatched by SCE hereunder.
9. Seller Initiated Test. During a Put Delivery Period, if Seller schedules or conducts a test during any Settlement Intervals in which Seller has not received a Dispatch Notice, or such test interferes with any Generating Unit’s ability to meet a Dispatch Notice, for the Generating Unit(s) being tested (“Seller Initiated Test”), Seller shall pay for all costs (including Gas Costs) relating to such Seller Initiated Test and, if SCE is the SC for the Project during the Seller Initiated Test, SCE shall pay to Seller, in the month following SCE’s receipt of CAISO revenues associated with such Seller Initiated Test, such revenues net of any (i) resource specific charge codes, (ii) penalties, or (iii) sanctions associated with the Energy generated and delivered during such Seller Initiated Test. Moreover, there shall be no Qualifying Delivered Energy, Variable O&M Payment, SDD Charge, SDD Administrative Charge, Heat Rate Adjustment Payment for any Settlement Interval during which a Seller Initiated Test takes place. To the extent such Seller Initiated Test prevents SCE from dispatching the applicable Generating Unit(s) as it would have absent such test, then, in accordance with Article Ten, such Generating Unit(s) will be deemed unavailable. Except as otherwise provided in Sections 7.01 and 7.02(c) and Appendix 7, Seller must notify SCE of any Test at least eight (8) days in advance of the Trading Day for the date on which Seller proposes to conduct such test. For purposes of clarification, any test performed before the Initial Delivery Date is a Seller Initiated Test.
10. Additional Seller Obligations. When requesting a Seller Initiated Test during a Put Delivery Period, Seller shall also enter information into the Outage Management System, as well as provide Availability Notices reflecting such Seller Initiated Test, as set forth in Article Twenty.
11. CAISO Certification.

Pursuant to Section 2.04(m), Seller is required to obtain CAISO Certification of the Project; *provided*, nothing in this Agreement, including the Appendices, shall be amended to reflect the outcome of this CAISO Certification. Notwithstanding the preceding sentence, SCE has the right during any Put Delivery Period to dispatch the Generating Unit(s) within the parameters established by the CAISO Certification of the Generating Unit(s) and to the Generating Unit(s)’ PMAX.

1. Additional Requirements for RA Capacity Qualification Tests.
2. Testing Notification and Attendance. Seller shall provide SCE with at least seven (7) Business Days’ Notice of Seller’s proposed dates for all RA Capacity Qualification Tests, including any RA Capacity Qualification Tests required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws. SCE shall be entitled to have at least one (1) representative from SCE and one (1) independent third party witness present to witness each RA Capacity Qualification Test and such persons shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for test data acquisition prior to commencement of any test. SCE shall be responsible for all costs, expenses and fees payable or reimbursable to the SCE representative and the third party, if any.
3. Testing Results Notification. Seller shall provide all RA Capacity Qualification Tests results for each Generating Unit within three (3) Business Days of Seller’s receipt for any such test throughout the Term. Within fifteen (15) Business Days after the completion of any RA Capacity Qualification Test, Seller shall prepare and submit to SCE a written report of such test. At a minimum, the report shall include: (i) a record of any unusual or abnormal conditions or events that occurred during such test and any actions taken in response thereto, and (ii) the measured data.
4. Updated Unit NQC or Unit EFC. Seller shall notify SCE within three (3) Business Days after it, or the Generating Unit’s SC, receives notice from the CAISO, or Seller or the Generating Unit’s SC becomes aware, that the Unit NQC or Unit EFC of any Generating Unit has changed, regardless of whether there is an increase or decrease in any such Unit NQC or Unit EFC.

# ARTICLE EIGHT

# SELLER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

1. Seller’s Operation Obligations.
2. Seller shall operate the Project in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3 and enforced by the CPUC, and CAISO mandated standards (collectively, “Industry Standards”).
3. Seller shall maintain all records applicable to each Generating Unit, including the electrical characteristics of the generators and settings or adjustments of the generator control equipment and protective devices and a daily log of maintenance performed, outages, changes in operating status, inspections and any other significant events related to the operation of each Generating Unit. In addition, for any Put Delivery Period, Seller shall maintain a daily operations log for each Generating Unit which shall include information on power production, fuel consumption and efficiency (if applicable) and availability. Information maintained pursuant to this Section 8.01(b) shall be provided to SCE, within fifteen (15) days of SCE's request.
4. Seller shall maintain and provide to SCE, within fifteen (15) days of SCE’s request, accurate records with respect to each Generating Unit’s Initial Commercial Operation Test, RA Capacity Qualification Tests, and Contract Capacity & Ancillary Services Tests, including the outcomes of such tests.
5. Seller shall maintain and make available to SCE and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and Industry Standards, including CPUC General Order 167. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Applicable Laws, Permit Requirements, or Industry Standards.
6. At SCE's request, during any Put Delivery Period, Seller shall make all reasonable efforts to deliver Energy to the Energy Delivery Point at an average rate of delivery at least equal to the Contract Capacity during periods of CAISO-declared system emergency.
7. SCE or the CAISO may require Seller, at Seller’s expense, to demonstrate to SCE’s reasonable satisfaction the correct calibration and operation of Seller’s Protective Apparatus any time SCE or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the PTO’s electric system or CAISO Grid.
8. Seller’s Maintenance and Repair Obligations.
9. Seller shall inspect, maintain and repair the Project in accordance with applicable Industry Standards. Seller shall maintain, and deliver to SCE upon request, maintenance and repair records of each Generating Unit.
10. Subject to Section 8.02(c), Seller shall promptly make all necessary repairs to the Project and take all actions necessary in order to provide the Product to SCE in accordance with the terms of this Agreement.
11. In the event that:
    * 1. an equipment failure (regardless of when such equipment failure occurs) with respect to any single Generating Unit results in the Expected Contract Quantity for such Generating Unit being less than or equal to seventy-five percent (75%) of the applicable GU Contract Capacity for such Generating Unit on average for a period of time exceeding forty-five days (45) consecutive days during any RA Delivery Period,
      2. a Contract Capacity & Ancillary Service Test demonstrates that the Available Capacity of any single Generating Unit is less than or equal to seventy-five percent (75%) of the applicable GU Contract Capacity during any Put Delivery Period, or
      3. an equipment failure (regardless of when such equipment failure occurs) with respect to any single Generating Unit results in the Available Capacity of such Generating Unit being less than or equal to seventy-five percent (75%) of the applicable GU Contract Capacity on average for a period of time exceeding seven (7) consecutive days during any Put Delivery Period,

Seller shall repair such Generating Unit in accordance with Accepted Electrical Practices and the procedure set forth in this Section 8.02. Within fourteen (14) days of any such failure, Seller shall complete a Successful Repair or present to SCE a description of the reason for the failure and a plan and schedule for completing a Successful Repair (the “Repair Plan”).

1. If SCE and Seller disagree about the Repair Plan, SCE may, at its expense, hire an independent third party engineering firm reasonably acceptable to Seller (the “Independent Engineer”, or “IE”), to perform an on-site assessment of the situation and make recommendations for completing a Successful Repair. Upon two (2) Business Days’ Notice by SCE, Seller shall grant the IE and SCE personnel access to the Generating Unit(s) and all relevant information including log books, maintenance records and reports, and other applicable materials. If, after seven (7) days of the delivery to Seller of the IE’s engineering report, Seller fails, in any material respect to meet the IE’s recommendations (as such recommendations may be updated from time to time by the IE) for the Successful Repair, or make sufficient progress in effecting same, in each case as determined and reported by the IE, consistent with Industry Standards, SCE shall have the right in its sole discretion to (i) exercise its Generating Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 3.02(m). Until a Successful Repair is demonstrated: (x) for any Put Delivery Period, the Generating Unit will be deemed unavailable for purposes of Article Ten; *provided*, upon Seller’s demonstration of a Successful Repair, the Generating Unit will be deemed available retroactive to the hour that such Successful Repair was completed, and (y) for any RA Delivery Period, the Expected Contract Quantity will be deemed zero (0) for purposes of Section 9.02(a).
2. If an Event of Default pursuant to Section 3.02(l) has occurred, then SCE shall have the right in its sole discretion to (i) exercise its Generating Unit Removal Right; or (ii) declare an Event of Default pursuant to Section 3.02(l).
3. During any Put Delivery Period, Seller shall not allow the Available Capacity of any Generating Unit to fall below seventy-five percent (75%) of the applicable GU Contract Capacity on average for a period of:
4. six (6) months (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) due to Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Generating Unit prior to the expiration of such six (6) month period (or longer cure period identified in the IE’s written report); or
5. sixty (60) days (whether or not consecutive) within a rolling twelve (12) month period (or such longer cure period identified as reasonable under the circumstances in the written report of an IE engaged by SCE) for any reason or circumstance, including Forced Outage, but excluding Planned Outage and Force Majeure if the IE has determined in its written report that Seller should reasonably have been able to achieve a Successful Repair of the Generating Unit prior to the expiration of such sixty (60) day period (or longer cure period identified in the IE’s written report).
6. For the avoidance of doubt, all repair obligations under this Section 8.02 that arose during a RA Delivery Period or Put Delivery Period shall remain after any transition between any RA Delivery Period and any Put Delivery Period.

# ARTICLE NINE

# MONTHLY CAPACITY PAYMENTS AND OTHER COMPENSATION

1. Compensation.
2. RA Delivery Period. Compensation to Seller for the Product for any RA Delivery Period shall consist of a Monthly RA Capacity Payment calculated in accordance with Section 9.02(a). These charges will be paid monthly, in arrears, in accordance with Article Eleven, for each month of the RA Delivery Period. Other payments and costs will be allocated during the RA Delivery Period in accordance with Section 9.06.
3. Put Delivery Period. Compensation to Seller for the Product for any Put Delivery Period shall consist of (a) a Monthly Energy Capacity Payment or Reduced Monthly Energy Capacity Payment calculated in accordance with Sections 9.02(b) and 9.03, and Article Ten; (b) a Variable O&M Payment calculated in accordance with Section 9.04; and (c) Start-Up Charges calculated in accordance with Section 9.05. These charges will be paid monthly, in arrears, in accordance with Article Eleven, for each month of the Put Delivery Period.
4. Monthly Capacity Payment.
5. RA Delivery Period. SCE shall make a Monthly RA Capacity Payment, payable monthly after the applicable Showing Month, in arrears, to Seller for each Showing Month of the RA Delivery Period, provided that such Monthly RA Capacity Payment is subject to reduction in accordance with this Agreement. The Monthly RA Capacity Payment for each Showing Month of the RA Delivery Period is calculated as set forth below,

“Monthly RA Capacity Payment” = (A x B x 1,000)

where:

*A* = applicable Monthly RA Capacity Price for that Showing Month

*B =*

*C* = Expected Contract Quantity provided by Seller to SCE pursuant to and consistent with Section 12.03 for the applicable day of the Showing Month, provided that, solely for purposes of calculating this item “C”, the amount of Product (in MWs) provided on any particular day of any Showing Month may not exceed the Contract Capacity during such day

D = Aggregate megawatts of Shortfall Capacity associated with the applicable day of the Showing Month

i = Each day of Showing Month

n = number of days in the Showing Month

The Monthly RA Capacity Payment calculation shall be rounded to two decimal places.

1. Put Delivery Period. For each Generating Unit, SCE shall make a Monthly Energy Capacity Payment, payable in arrears, to Seller for each month of the Put Delivery Period. The Monthly Energy Capacity Payment for each Generating Unit for each month of a Put Delivery Period is set forth in Appendix 9.02 and is subject to reduction in accordance with this Agreement. If the Monthly Energy Capacity Payment is reduced in accordance with this Agreement, SCE shall make the Reduced Monthly Energy Capacity Payment in lieu of the Monthly Energy Capacity Payment.
2. Pro Rata Monthly Energy Capacity Payments.

The Parties agree that if the first and/or last Contact Years are Put Delivery Periods and (a) the month of the Initial Delivery Date is after the first month identified in the “Monthly Energy Capacity Payment Price Shape Table” in Appendix 9.02 or (b) the end of the Delivery Period occurs after the last month identified in the “Monthly Energy Capacity Payment Price Shape Table” in Appendix 9.02, then, as applicable, the monthly price shape percentages in the year that corresponds to the year of the Initial Delivery Date or the year the Delivery Period ends will be adjusted for the months corresponding to the Delivery Period in that year as follows: (a) the summation of the percentages for the year shall equal the number of months corresponding to the Delivery Period in that year times 100% (e.g., if 6 months remain in the Delivery Period, then the summation of percentages shall equal 600%); and (b) as determined in SCE’s reasonable discretion, the shape of the monthly price shape percentages will be similar to the shape that was originally in the Monthly Energy Capacity Payment Price Shape Table.

In addition, the Monthly Energy Capacity Payment amounts identified in Section C of Appendix 9.02 will be adjusted to reflect the new monthly price shape percentages.

1. Variable O&M Payment During Put Delivery Periods.

For any Put Delivery Period, SCE shall pay Seller a Variable O&M Payment for each Generating Unit, calculated as follows:

Variable O&M Paymentm = Variable O&M Chargey \*  Qualifying Delivered Energyi

where:

m = the relevant month within the Put Delivery Period being calculated

y = the Contract Year corresponding to month “m”

n = the number of Settlement Intervals in month “m”

i = the Settlement Interval in month “m”

1. Start-Up Charge During Put Delivery Periods.

SCE shall pay the Start-Up Charge specified in Appendix 9.05 and the Start-Up Aux Charge for each Start-Up during a Put Delivery Period unless specified otherwise in this Agreement. For the first Contract Year of this Agreement, the Start-Up Charge shall be the “First Year Start-Up Charge” specified in Appendix 9.05.  For all subsequent Contract Years, the Start-Up Charge will be the “First Year Start-Up Charge” annually escalated to the current Contract Year, based upon the Start-Up Charge annual escalation factor in Appendix 9.05. During any Put Delivery Period, in addition to all Energy produced after a Start-Up, all Energy produced prior to the Generating Unit achieving a Start-Up during the respective start-up cycle shall be for SCE’s account.

1. If SCE aborts a Start-Up before the Generating Unit achieves full Start-Up, then SCE shall (i) pay the Start-Up Charge and (ii) pay the portion of the Start-Up Aux Charge that is proportional to (A) the amount of Start-Up Aux Energy required from the beginning of the Start-Up to the time when such Start-Up was aborted as compared to (B) the applicable Start-Up Time; *provided*, that such payment shall not exceed the applicable Start-Up Aux Charge.
2. If the Generating Unit is unable to generate or deliver Energy to the Energy Delivery Point after a Start-Up, but before the next scheduled shutdown of the Generating Unit for any reason other than a Force Majeure, SCE is not responsible for any charges under this Section 9.05 associated with the next Start-Up.
3. SCE shall pay the applicable Transition Cost for each MSG Transition during a Put Delivery Period unless specified otherwise in this Agreement. All Energy produced by the Generating Unit during the respective transition shall be for SCE’s account.
4. Allocation of Other Payments and Costs During RA Delivery Periods.

With respect to any RA Delivery Period:

1. Seller shall retain any revenues it may receive from and pay all costs, charges, fees or penalties charged by the CAISO or any other third party with respect to the Generating Units for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services.
2. Buyer shall be entitled to receive and retain all revenues associated with the Product (including any capacity revenues from (i) RMR Contracts for the Generating Units, (ii) the Capacity Procurement Mechanism, or its successor, associated with the Generating Units, and (iii) RUC Availability Payments, or its successor, but excluding payments described in Section 9.06(a)(i)-(iv)).
3. In accordance with Section 9.02(a) and Article Eleven of this Agreement,

(i) all such Buyer revenues described in this Section 9.06, but received by Seller, or a Generating Unit’s SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Generating Unit’s SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Eleven of this Agreement against any future amounts Buyer may owe to Seller under this Agreement. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Product; and

(ii) all such Seller, or a Generating Unit’s SC, owner, or operator revenues described in this Section 9.06, but received by Buyer shall be remitted to Seller.

1. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for each day of each Showing Month provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.
2. Seller bears sole responsibility for establishing SC, Fuel Manager, and Contracted Marketer services. Seller shall be responsible for all costs associated with establishing such service and any natural gas costs needed to operate the Generating Units.

# ARTICLE TEN

# Allocation of Standard capacity product payments and charges; ADJUSTMENTS TO Monthly ENERGY CAPACITY PAYMENT FOR UNAVAILABILITY and HEAT RATE

1. Availability.
2. Allocation of Standard Capacity Product Payments and Charges. During the Delivery Period, if the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff, or any similar standards, charges or payments that may be implemented for resources providing flexible capacity resource adequacy attributes or other types of Resource Adequacy Benefits, any Availability Incentive Payments and other resulting payments will be for the benefit of Seller and for Seller’s account and any Non-Availability Charges and other resulting charges will be the responsibility of Seller and for Seller’s account.
3. RA Capacity Reduction. If, at any time during any Put Delivery Period, any of the Generating Unit’s Net Qualifying Capacity does not equal its GU Contract Capacity, then a RA Adjustment for such Generating Unit shall be calculated in the following manner:   
     
   RA Adjustment = Net Qualifying Capacity of the Generating Unit / the applicable GU Contract Capacity  
     
   ; *provided*, if the RA Adjustment is greater than one (1), then the RA Adjustment for such Generating Unit shall equal one (1). For each applicable Generating Unit, the RA Adjustment shall be applied to the calculation of the Reduced Monthly Energy Capacity Payment for such Generating Unit under Section 10.01(e).
4. Capacity Payment Reduction. If, regardless of cause including without limitation by reason of Force Majeure, Forced Outage or Planned Outage, (x) the Available Capacity of a Generating Unit is less than its GU Contract Capacity in any Settlement Interval in a month during any Put Delivery Period or (y) the Qualifying Delivered Energy from such Generating Unit is less than the Performance Tolerance Band Lower Limit in any Settlement Interval in a month during any Put Delivery Period, then the Capacity Payment Reduction for the affected Generating Unit for that month will be calculated as follows:
5. For each Settlement Interval in the month, the “Price-Weighted Capacity Availability” is calculated as follows:

Price-Weighted Capacity Availabilityi =   
(AMCPh(i) \* Capacity Availabilityi) / AMCPavg(m)

where:

i = the Settlement Interval in month “m”

AMCP = 

h(i) = the Trading Hour corresponding to Settlement Interval “i” being calculated

avg(m) = the simple average over all Settlement Intervals in month “m”

For purposes of such calculation, Capacity Availability for any Settlement Interval shall not exceed the applicable GU Contract Capacity.

1. Using the Price-Weighted Capacity Availability calculated above, the “Price-Weighted Monthly Capacity Availability” for month “m” is calculated as follows:

Price-Weighted Monthly Capacity Availabilitym =  
Price-Weighted Capacity Availabilityi

where:

m = the relevant month within the Put Delivery Period being calculated

n = the number of Settlement Intervals in month “m”

i = the Settlement Interval in month “m”

1. Using the Price-Weighted Monthly Capacity Availability calculated above, the “Capacity Price Adjustment Factor” for month “m” is calculated as follows:

Capacity Price Adjustment Factorm =   
Price-Weighted Monthly Capacity Availabilitym / (Q \* n)

where:

m = the relevant month within the Put Delivery Period being calculated

Q = the GU Contract Capacity

n = the number of Settlement Intervals in month “m”

1. Finally, using the Capacity Price Adjustment Factor calculated above, the “Capacity Payment Reduction” for month “m” is calculated as follows:

*[Use this formula for CCGTs or Boilers:]*

Capacity Payment Reductionm,CCGT / BOILER = 0.85 \* Monthly Energy Capacity Payment \* (1 –Capacity Price Adjustment Factor)

*[Use this formula for CTs:]*

Capacity Payment Reductionm,CT = 0.50 \* Monthly Energy Capacity Payment \* (1 – Capacity Price Adjustment Factor)

For purposes of calculating the Capacity Payment Reduction in this subsection (iv), the Monthly Energy Capacity Payment is the Monthly Energy Capacity Payment applicable to the Generating Unit as set forth in Appendix 9.02.

1. A/S Capacity Payment Reduction: If, regardless of cause including without limitation by reason of Force Majeure, Forced Outage or Planned Outage, for each Ancillary Service listed in Appendix 1.02, the A/S Availability of a Generating Unit is less than the applicable A/S Maximum Capacity quantity specified in Appendix 1.02 in any Settlement Interval of a month during any Put Delivery Period, then the A/S Capacity Payment Reduction for the Generating Unit for that month will be calculated as follows:
2. The “Monthly Available A/S Capacity” for month “m” is calculated as follows:

Monthly Available A/S Capacitym =  A/S Availabilityi,k

where:

m = the relevant month within the Put Delivery Period being calculated

n = the number of Settlement Intervals in month “m”

i = the Settlement Interval in month “m”

k = the applicable Ancillary Service

For purposes of such calculation, for each Ancillary Service, A/S Availability for any Settlement Interval shall not exceed the applicable A/S Maximum Capacity quantity specified in Appendix 1.02.

1. Using the Monthly Available A/S Capacity calculated above, the “A/S Price Adjustment Factor” for month “m” is calculated as follows:

A/S Price Adjustment Factorm =   
Monthly Available A/S Capacitym / ( A/S Maximum Capacityk \* n)

where:

The applicable A/S Maximum Capacity is set forth in Appendix 1.02

m = the relevant month within the Put Delivery Period being calculated

n = the number of Settlement Intervals in month “m”

k = the applicable Ancillary Service

1. Using the A/S Price Adjustment Factor calculated above, the “A/S Capacity Payment Reduction” for month “m” is calculated as follows:

*[Use this formula for CCGTs or Boilers:]*

A/S Capacity Payment Reductionm,CCGT/ BOILER = 0.15 \* Monthly Energy Capacity Payment \* (1 – A/S Price Adjustment Factor)

*[Use this formula for CTs:]*

A/S Capacity Payment Reductionm,CT = 0.50 \* Monthly Energy Capacity Payment \* (1 – A/S Price Adjustment Factor)

For purposes of calculating the A/S Capacity Payment Reduction in this subsection (iii), the Monthly Energy Capacity Payment is the Monthly Energy Capacity Payment applicable to the Generating Unit as set forth in Appendix 9.02.

1. The “Reduced Monthly Energy Capacity Payment” for each Generating Unit shall be calculated as follows:  
     
   Reduced Monthly Energy Capacity Payment = (the applicable Monthly Energy Capacity Payment - (the applicable Capacity Payment Reduction + the applicable A/S Capacity Payment Reduction)) \* the applicable RA Adjustment

# ARTICLE ELEVEN

# PAYMENT AND BILLING

1. Billing Period.

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, provided that the Monthly Capacity Payment related to a Showing Month will not be deemed to be incurred until such Showing Month has concluded, (the “Obligation Month”), together with all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder. An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 11.03, below. If an invoice is not rendered within twenty-four (24) months after the close of the Obligation Month, the right to any payment for that Obligation Month under this Agreement is waived.

1. Timeliness of Payment.

All invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of the month in which the owing Party receives the invoice, or the tenth (10th) day after the owing Party’s receipt of the invoice, or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date, including amounts in dispute pursuant to Section 11.03, will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

1. Disputes and Adjustments of Invoices.

A Party may adjust any invoice rendered by it for an Obligation Month to correct any arithmetic or computational error or to include additional charges or claims within twelve (12) months after the close of such Obligation Month. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing Notice to the other Party within the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twelve (12) months after the close of the Obligation Month. Failure to provide such Notice within the time frames set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it shall pay the undisputed portion of the invoice when due, but shall have the option, in its sole discretion, to withhold payment of the disputed amount; *provided,* such Party must provide Notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is paid in full. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment.

1. Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Seller under this Agreement against payment of any amounts owed to SCE by Seller arising out of, or related to, this Agreement and any other SCE agreement, tariff, obligation or liability. Nothing in this Section 11.04 limits SCE’s rights under applicable tariffs, other agreements or Applicable Law.

# ARTICLE TWELVE

# PRODUCT DELIVERY OBLIGATIONS (RA DELIVERY PERIODS)

12.01 Product.

Seller shall provide Buyer with the Product each day of each Showing Month that is part of a RA Delivery Period in accordance with this Article Twelve.

12.02. Adjustments to Product Provided.

(a) Planned Outages: Seller’s obligation to deliver the Product for each day of each Showing Month of a RA Delivery Period may be reduced by the amount of any Planned Outages which exist with respect to any portion of any Generating Unit during the applicable Showing Month for the applicable days of such Planned Outages. Seller shall notify, no later than fifteen (15) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to that Showing Month, of the amount of Product (in MWs) from the Generating Units that Buyer is permitted to include in Buyer’s Compliance Showings applicable to that month as a result of such Planned Outage.

(b) Reductions in Net Qualifying Capacity: Subject to Section 8.02, Seller’s obligation to deliver the Product for each Showing Month during a RA Delivery Period may also be reduced in the event any of the Generating Units experiences a reduction in its Net Qualifying Capacity after the Initial Delivery Date as determined by the CAISO.

12.03. Delivery of Product.

Seller shall provide Buyer with the Expected Contract Quantity for each day of each Showing Month that is part of a RA Delivery Period consistent with the following:

(a) Seller shall, on a timely basis, submit, or cause the Generating Unit’s SC to submit, Supply Plans in accordance with the Tariff, and any other decisions or orders of the CPUC associated with providing the Product under this Agreement, to identify and confirm the Expected Contract Quantity provided to Buyer for each day of each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each day of such Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

(b) Seller shall or shall cause the Generating Unit’s SC to (i) submit written notification to Buyer, no later than fifteen (15) Business Days before the applicable Compliance Showing deadlines for each Showing Month, that Buyer will be credited with the Expected Contract Quantity for each day of such Showing Month in the Generating Unit’s SC Supply Plan so that the credited Expected Contract Quantity for each day of the Showing Month equals the Expected Contract Quantity for such day of such Showing Month.

12.04. Indemnities for Failure to Deliver Expected Contract Quantity.

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Expected Contract Quantity for any portion of the RA Delivery Period;

(b) Seller’s failure to provide notice of the non-availability of any portion of the Expected Contract Quantity for any portion of the RA Delivery Period as required under Section 12.03;

(c) A Generating Unit’s SC’s failure to timely submit Supply Plans that identify Buyer’s right to the Expected Contract Quantity purchased hereunder for each day of the RA Delivery Period; or

(d) A Generating Unit SC’s failure to submit accurate Supply Plans that identify Buyer’s right to the Expected Contract Quantity purchased hereunder for each day of the RA Delivery Period.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse SCE for those penalties, fines or costs, then SCE may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

12.05. Buyer’s Re-Sale of Product.

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement for any RA Delivery Period (“Resold Product”), Seller agrees, and agrees to cause the Generating Unit’s SC, to follow Buyer’s instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause the Generating Unit’s SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Generating Unit’s SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Section 12.04, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

12.06. Post-Showing Replacement Capacity.

For any month of the RA Delivery Period, if the CAISO determines, in accordance with the Tariff, that any portion of the Expected Contract Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showings requires outage replacement in accordance with Section 40.7 of the Tariff (“Shortfall Capacity”), Seller’s Monthly RA Capacity Payment will be reduced in accordance with Section 9.02(a) above and, neither Seller, nor the Generating Unit’s SC, shall have the right to provide Buyer with RA Replacement Capacity with respect to such Shortfall Capacity.

12.07. Holdback Capacity.

For any month of the RA Delivery Period, and no later than five (5) Business Days before the relevant deadline for the initial Compliance Showing with respect to a particular Showing Month, Buyer may request that Seller not list, or cause the Generating Unit’s SC not to list, a portion or all of a Generating Unit’s applicable Expected Contract Quantity for any portion(s) of such Showing Month on the Supply Plan. The amount of Expected Contract Quantity that is the subject of such a request shall be deemed Expected Contract Quantity provided consistent with Section 12.03 for purposes of calculating a Monthly RA Capacity Payment pursuant to Section 9.02(a) and calculating any amounts due pursuant to Section 12.04. Seller shall, or shall cause each Generating Unit’s SC to, comply with Buyer’s request under this Section 12.07.

# ARTICLE THIRTEEN

# CREDIT AND COLLATERAL

1. Financial Information.

If requested by one Party, the other Party shall deliver the following financial statements, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP, the International Financial Reporting Standards (“IFRS”), or any successor to either of the foregoing (“Successor”):

1. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
2. Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year.

In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP. In each case, the financial statements specified above must be certified in accordance with all Applicable Laws and regulations, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if such Party is not an SEC reporting company.

If a Party’s financial statements are publicly available electronically on the website of that Party or the SEC, then the Party shall be deemed to have met the delivery requirements of this Section 13.01. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

1. Seller’s Credit Requirements.
2. Credit Requirement After Effective Date. Seller shall post and thereafter maintain delivery date security collateral (“Delivery Date Security”) equal to ninety dollars ($90) for each kilowatt of the total Expected Contract Capacity. Seller shall post the Delivery Date Security in accordance with the following terms and conditions:
3. Seller shall post one-half of the Delivery Date Security within two (2) Business Days following the Effective Date, with the remainder to be posted within two (2) Business Days after Final CPUC Approval is obtained or waived by SCE in its sole discretion;
4. The Delivery Date Security shall be held by SCE as collateral security for Seller’s obligation to meet the Expected Initial Delivery Date;
5. The Delivery Date Security must be in the form of either a cash deposit or a Letter of Credit;
6. If Seller posts any Delivery Date Security in cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 13.03(a) of this Agreement; and
7. If Seller provides the Delivery Date Security by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 13.03(b).

In the event SCE draws Daily Delay Damages from the Delivery Date Security, Seller shall not be required to replenish the drawn amount.

1. Return of Delivery Date Security. Within five (5) Business Days following the Initial Delivery Date, or upon termination of this Agreement pursuant to Section 2.02 or Section 4.02, SCE shall return to Seller the Delivery Date Security, less any Daily Delay Damages SCE has retained if the Initial Delivery Date is after the Expected Initial Delivery Date. If Seller achieves an Initial Delivery Date for the Project by the Expected Initial Delivery Date, SCE shall return to Seller the entire amount of the Delivery Date Security held by SCE.
2. Credit Requirements During Delivery Period.
3. During the Delivery Period, Seller shall post and maintain Performance Assurance to SCE in an amount equal to one hundred thirty dollars ($130) for each kilowatt of the total Contract Capacity as established by the SCE-accepted Initial Commercial Operation Test. Seller shall post the Performance Assurance in accordance with the following terms and conditions:
4. Performance Assurance must be in the form of either a cash deposit or a Letter of Credit;
5. Performance Assurance shall be posted to SCE and maintained 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;
6. If Seller posts any Performance Assurance in cash, Seller will receive Simple Interest payments in accordance with the procedure specified in Section 13.03(a) of this Agreement; and
7. If Seller provides Performance Assurance by means of a Letter of Credit, such Letter of Credit must be provided substantially in the form of Appendix 13.03(b).
8. Notwithstanding any other provision in this Agreement, SCE is not required to provide Performance Assurance to Seller.
9. Administration of Performance Assurance.
10. Interest Payments on Cash. Delivery Date Security or Performance Assurance posted in cash shall earn Simple Interest. Seller shall provide a monthly invoice to SCE that sets forth the calculation of the interest amount due and SCE shall make payment thereof by the later of the third (3rd) Business Day (so long as no Event of Default has occurred and is continuing with respect to Seller):
11. of the first (1st) month after the month to which the invoice relates; or
12. after the day on which such invoice is received.

On or after the occurrence of an Event of Default by Seller, SCE shall retain any such interest amount as additional Performance Assurance hereunder for so long as such Event of Default is continuing or the obligations of Seller under this Agreement have not been satisfied.

1. Letters of Credit. Delivery Date Security or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Appendix 13.03(b) and subject to the following provisions:
2. Each Letter of Credit shall be maintained for the benefit of SCE. Seller shall:
3. renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
4. if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit; and
5. 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 a substitute Letter of Credit or alternative Performance Assurance acceptable to SCE, in its sole discretion, within one (1) Business Day after such refusal;

*provided,* if Seller fails to perform in accordance with A., B., or C. above, Seller shall be deemed to have failed to meet its obligation to provide Performance Assurance.

1. 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 (1st) Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies);
2. Upon, or at any time after SCE has determined that Seller (A) has forfeited all or part of its Delivery Date Security, or (B) owes Daily Delay Damages pursuant to Section 2.07(a), then SCE may draw on any undrawn portion of any outstanding Letter of Credit. Cash proceeds received by SCE from drawing upon the Letter of Credit shall be for the account of SCE.
3. Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then SCE may draw on the entire 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 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 under this Agreement and SCE shall have the rights and remedies set forth in Section 13.04 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 (A) for any failure to provide sufficient Performance Assurance or (B) for any amounts owing to SCE and remaining unpaid after the application of the amounts so drawn by SCE.
4. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.
5. First Priority Security Interest.

To secure Seller’s performance of 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 of setoff against), and assignment of the Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of 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 of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, SCE may do any one or more of the following:

1. exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
2. exercise any of its rights of setoff against any and all property of Seller in SCE’s possession;
3. draw on any outstanding Letter of Credit issued for its benefit; and
4. liquidate all 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 remaining liable for any amounts owing to SCE after such application), subject to SCE’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

1. Uniform Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, including, but not limited to, those provisions set forth in Article Thirteen and Article Three, neither Party:

1. has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or
2. will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Article Thirteen and Article Three of this Agreement; and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.
3. Consolidation of Seller’s Financial Statements.
4. Buyer shall determine, through consultation with its internal accountants and review with their independent registered public accounting firm, that Buyer is required to consolidate Seller’s financial statements with Buyer’s financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, “Consolidation of Variable Interest Entities” (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the “Financial Consolidation Requirement”).
5. If the Financial Consolidation Requirement is applicable, then:
6. Within 20 days following the end of each calendar year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements. The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist. If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.
7. Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period. The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller’s records. It is permissible for Seller to use accruals and prior month’s estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.
8. If Seller regularly prepares its financial data in accordance with GAAP, IFRS, or Successor, the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller’s regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
9. If the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer’s independent registered public accounting firm such access to Seller’s records and personnel, as reasonably required so that Buyer’s 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 the foregoing shall be borne by Buyer. If Buyer’s independent registered public accounting firm during or as a result of the audits permitted in this Section 13.06(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller’s internal controls over financial reporting, then within 90 days of Seller’s receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided*, *however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller’s true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.
10. Buyer shall treat Seller’s financial statements and other financial information provided under the terms of this Section 13.06 in strict confidence and, accordingly:
11. Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer’s or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company’s financial condition or to obtain credit ratings;
12. Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer’s or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer’s or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Article Twenty Nine; and
13. Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 13.06, (2) use such information solely for purposes of conducting the audits described in this Section 13.06, and (3) disclose any information received only to personnel responsible for conducting the audits.
14. If the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
15. If, after consultation and review, the Parties do not agree on issues raised by Section 16.03(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party’s respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 3.01. If the independent audit firm associated with Buyer still determines, after review by the third party independent audit firm, that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided*, *however*, that in addition to the protections in Section 16.03(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

# ARTICLE FOURTEEN

# COLLATERAL ASSIGNMENT

1. Consent to Collateral Assignment.

Subject to the provisions of this Article Fourteen, Seller shall have the right to assign this Agreement to Lender as collateral for any financing or refinancing of the Project; *provided*, Seller shall be responsible for SCE’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any such assignment, including without limitation attorneys’ fees. SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions:

1. SCE shall give Notice of an Event of Default by Seller, to the persons to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate the Agreement as a result of such Event of Default.
2. Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report setting forth:
3. the status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
4. impediments to the cure plan or its development;
5. 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
6. any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender shall provide the report to SCE within ten (10) Business Days of 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.

1. Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under the Agreement; *provided,* such cure period may, in SCE’s sole discretion, be extended by no more than an additional one hundred eighty (180) days.
2. Lender shall have the right to consent prior to any termination of the Agreement which does not arise out of an Event of Default.
3. Lender shall receive prior Notice of, and the right to approve, material amendments to the Agreement, which approval shall not be unreasonably withheld, delayed or conditioned.
4. In the event Lender, directly or indirectly, takes possession of, or title to the Project (including possession by a receiver or title by foreclosure or deed in *lieu* of foreclosure), Lender shall assume all of Seller’s obligations arising under the Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement). Lender shall have no personal liability for any monetary obligations of Seller under the Agreement which are due and owing to SCE as of the assumption date; *provided,* if, prior to such assumption, SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the assumption date in order to avoid the exercise by SCE (in its sole discretion) of SCE’s right to terminate the Agreement in respect of such Event of Default, then Lender, at its option and in its sole discretion, may elect to either (i) cause such Event of Default to be cured, or (ii) assume Seller’s obligations under the Agreement and all related agreements, including the pre-assumption payment obligations that are otherwise excluded.
5. If Lender elects to sell or transfer the Project (after Lender directly or indirectly, takes possession of, or title to the Project), or sale of the Project occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity with financial qualifications (including, collateral support and any other additional security as may be required by SCE) and operating experience at least equivalent to Seller as of the Effective Date, as determined by SCE in its sole discretion.
6. If this Agreement is rejected in Seller’s bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in *lieu* of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its bankruptcy case that would, in SCE’s judgment, materially impact the rights or obligations of SCE under such agreement.
7. Seller shall reimburse, or shall cause Lender to reimburse, SCE for all reasonable and direct third party expenses (including the reasonable fees and expenses of counsel of SCE’s choice) incurred by SCE in the preparation, negotiation, execution and/or delivery of any documents required under this Article Fourteen, or otherwise requested by Seller or Lender in connection with this Article Fourteen.

# ARTICLE FIFTEEN

# GOVERNMENTAL AND ENVIRONMENTAL CHARGES

1. Indemnification.

Seller is solely responsible for all Environmental Costs, all GHG Charges, Seller’s AB 32 Compliance Obligation, and all other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with AB 32 or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by an authorized Governmental Authority) with respect to the Project and/or Seller. Seller shall indemnify, defend and hold SCE harmless from and against all liabilities, damages, claims, losses, costs and/or expenses (including, without limitation, attorneys’ fees) incurred by or brought against SCE in connection with such Environmental Costs, GHG Charges, AB 32 Compliance Obligation, and other such costs.

1. Greenhouse Gas Emissions Regulations Other than AB 32 For Put Delivery Periods.

In the event that Applicable Laws are developed in an effort to offset or reduce Greenhouse Gas emissions, other than AB 32, by any other federal, state, or local authorized Governmental Authority, subject to this Section 15.02, SCE shall compensate Seller for the GHG Charges resulting from such Applicable Laws incurred during any Put Delivery Period.

SCE shall reimburse Seller solely for GHG Charges incurred during any Put Delivery Period that are incurred due to an SCE dispatch. Seller shall submit documentation of the GHG Charges to SCE and such documentation shall establish to SCE’s reasonable satisfaction that:

1. Seller is actually liable for the GHG Charges for Greenhouse Gas emitted during the Put Delivery Period; *provided* that, such GHG Charges may be payable after the Put Delivery Period;
2. The specific amount of the GHG Charges;
3. The GHG Charge was imposed upon Seller by an authorized Governmental Authority in whose jurisdiction the Project is located, or which otherwise has jurisdiction over Seller or the Project;
4. Seller has paid the Governmental Authority identified in (c) above the full amount of the GHG Charge for which Seller seeks reimbursement from SCE under this Section 15.02; and
5. Seller took all reasonable steps to mitigate the cost or amount of such GHG Charges, including utilizing any Non-AB 32 GHG Credits or revenues which have been allocated to or received by Seller associated with any allowance or credit associated with Greenhouse Gas emissions (whether specific to Project or Seller); *provided*, that the reasonable steps shall not be deemed to require Seller to make capital improvements to the Project.

In no event shall SCE be responsible for GHG Charges associated with (i) Greenhouse Gas emissions during a Put Delivery Period that exceed the GHG Cap, (ii) a Non-SCE Dispatch during a Put Delivery Period, or (iii) any RA Delivery Period.

In the event that Seller is allocated, issued or has the right to obtain Non-AB 32 GHG Credits or revenues (as described in Section 15.02(e) above) for a portion of, or its entire fleet of generating units, then Seller shall utilize a proportional amount of such Non-AB 32 GHG Credits or revenues to mitigate the GHG Charges otherwise reimbursable by SCE at no cost to SCE. For purposes of this paragraph and Section 15.02(e), all references to “Seller” shall be deemed to include Seller’s parent company, holding company or other entity to which allowances, credits or revenues may be or have been allocated to or given rights to obtain for the Project. The proportional amount of Non-AB 32 GHG Credits or revenues, as applicable, to be utilized by Seller to mitigate the GHG Charges otherwise reimbursable by SCE shall be calculated based on the method, formula or other similar calculation by which the Governmental Authority used to determine the amount of such credits or revenues attributable to each Generating Unit compared to the sum of all Non-AB 32 GHG Credits or revenues for all generating units within Seller’s fleet.

In the event that Seller is allocated, issued or has the right to obtain Non-AB 32 GHG Credits or revenues (as described in Section 15.02(e) above) for a period of time which may not be limited to Put Delivery Periods, then Seller shall utilize a proportional amount of such Non-AB 32 GHG Credits or revenues to mitigate the GHG Charges otherwise reimbursable by SCE at no cost to SCE. The proportional amount of Non-AB 32 GHG Credits or revenues, as applicable, to be utilized by Seller to mitigate the GHG Charges otherwise reimbursable by SCE for any Contract Year shall be calculated based on the method, formula or other similar calculation by which the Governmental Authority used to determine the amount of such credits or revenues attributable to a Contract Year compared to the period of time for all Non-AB 32 GHG Credits or revenues that Seller is allocated, issued or has the right to obtain.

In the event that the existing language in this Section 15.02 is insufficient to address a new program or regulation, the Parties agree to work in good faith to amend this Agreement to include a methodology for calculating new costs associated with Greenhouse Gas emissions attributable to any SCE dispatch of the Project.

1. AB 32 Reimbursement Obligations During Put Delivery Periods.
2. If Seller is not eligible for an exemption under AB 32 or the GHG Regulations, SCE shall reimburse Seller for the AB 32 Reimbursement Obligation incurred during any Put Delivery Period; *provided* that:
   1. Upon SCE’s conveyance and delivery of Offset Credits or equivalent financial settlement, SCE shall have fulfilled its obligation under this Agreement to compensate Seller for the purported AB 32 Reimbursement Obligation. SCE is not liable for Seller’s failure to satisfy its AB 32 Compliance Obligation or otherwise comply with AB 32 or the GHG Regulations.
   2. SCE shall fulfill its AB 32 Reimbursement Obligation to Seller in accordance with the Compliance Periods and deadlines associated therewith outlined in the GHG Regulations for timely surrender of compliance instruments.
3. In accordance with the Article Eleven, Seller shall provide SCE current information regarding the AB 32 Reimbursement Obligation in each monthly invoice including:
4. Seller’s estimate of the current total AB 32 Reimbursement Obligation with respect to the completed portion of the Delivery Period on a rolling monthly basis, which shall be calculated utilizing the methodology set forth in Section 15.03(c);
5. A rolling balance of all applicable CCAs, Offset Credits, Emission Reduction Credits, or other similar rights to emit Greenhouse Gas in accordance with the GHG Regulations (“GHG Credits”), if any, that Seller has obtained or received pertaining to the Project, including any applicable revenues, in each case, as described in Section 15.03(d) below; and
6. A rolling net balance of the then current AB 32 Reimbursement Obligation due to Seller by SCE which shall be determined by subtracting (A) all Offset Credits previously delivered by SCE to Seller pursuant to Sections 15.03(a)(i) and 15.03(f)(i) and (iii), and (B) the equivalent in metric tons of all financial compensation previously paid by SCE to Seller pursuant to Sections 15.03(a)(i) and 15.03(f)(ii) and (iii), from the total AB 32 Reimbursement Obligation for the completed portion of the Delivery Period.
7. The AB 32 Reimbursement Obligation for any Put Delivery Period shall be equal to:
8. The number of metric tons of Greenhouse Gas (rounded to the nearest metric ton) during the applicable time period, which number is determined by multiplying the GHG Rate by the lesser of (A) the Required Natural Gas Quantity for each calendar day during the applicable time period, or (B) the actual gas burn (excluding gas burn for Non-SCE Dispatch) for each calendar day during the applicable time period; less
9. The sum of any GHG Credits or revenues (in equivalent metric tons) calculated pursuant to Section 15.03(d).
10. In the event before or during the Term Seller is:
11. Allocated, issued, or has the right to obtain, at no cost to Seller, any GHG Credits to offset or reduce Seller’s AB 32 Compliance Obligation, then Seller shall obtain and utilize such GHG Credits to mitigate SCE’s AB 32 Reimbursement Obligation at no cost to SCE.
12. Allocated, issued or has the right to obtain GHG Credits for a portion of, or its entire fleet of generating units (all or some of the generating units owned, managed, or controlled by Seller that are subject to the GHG Regulations) (“Seller’s Fleet”), then Seller shall obtain and utilize a proportional amount of such GHG Credits to mitigate SCE’s AB 32 Reimbursement Obligation at no cost to SCE.
13. Allocated or receives revenues, whether specific to the Project or Seller’s Fleet, associated with any GHG Credits attributable to Seller’s AB 32 Compliance Obligation, then Seller shall remit any such revenue or, if allocated to Seller’s Fleet, the proportional amount of such revenue, to SCE to mitigate SCE’s AB 32 Reimbursement Obligation

In the event that Seller is allocated, issued or has the right to obtain GHG Credits or associated revenues for a period of time which may not be limited to Put Delivery Periods, then Seller shall utilize or remit a proportional amount of such GHG Credits or revenues to mitigate SCE’s AB 32 Reimbursement Obligation. The proportional amount of GHG Credits or revenues, as applicable, to be utilized or remitted by Seller to mitigate SCE’s AB 32 Reimbursement Obligation for any Contract Year shall be calculated based on the method, formula or other similar calculation by which the Governmental Authority used to determine the amount of such credits or revenues attributable to a Contract Year compared to the period of time for all GHG Credits or revenues that Seller is allocated, issued or has the right to obtain for the Project.

For purposes of this Section 15.03(d), all references to “Seller” shall be deemed to include Seller’s parent company, holding company or other entity to which GHG Credits and/or revenue may be or have been allocated to or given rights to obtain for the Project.

For purposes of Section 15.03(d)(ii) and (iii), the proportional amount of GHG Credits and/or revenues associated therewith to be utilized or remitted to mitigate SCE’s AB 32 Reimbursement Obligation shall be calculated based on the AB 32 Reimbursement Obligation attributable to the Project compared to the sum of all the AB 32 Compliance Obligations for all of the generating units within Seller’s Fleet.

1. Title to, and risk of loss, invalidation, cancellation or removal of each Offset Credit conveyed and delivered to Seller by SCE transfers from SCE to Seller upon SCE’s conveyance and delivery to Seller, including and without limitation, any such loss, invalidation, cancellation or removal by an authorized Governmental Authority in accordance with the GHG Regulations.
2. If Seller is not subject to an exemption, SCE shall satisfy its AB 32 Reimbursement Obligation for the completed portion of any Put Delivery Period no later than the AB 32 Quarterly Settlement Date by:
3. Providing to Seller Offset Credits that will permit Seller to satisfy the AB 32 Compliance Obligation imposed on Seller with respect to the Project during the Put Delivery Period; *provided* that such Offset Credits would not exceed the Offset Credit Limit;
4. Financially settling the AB 32 Reimbursement Obligation for the Put Delivery Period by providing to Seller a dollar amount calculated by the product of (x) the AB 32 Reimbursement Obligation and (y) the most recent Auction Settlement Price; or
5. Any combination of the compensation methods described above in (i) or (ii), such that SCE shall compensate Seller for the AB 32 Reimbursement Obligation incurred by the Project during the completed portion of the Put Delivery Period.

No later than fifteen (15) days prior to each Auction, SCE shall provide Notice to Seller which shall include instructions to Seller outlining SCE’s method of compensation to Seller of the AB 32 Reimbursement Obligation reflected in 15.03(f)(i)–(iii) above. Such Notice shall identify (1) the total quantity of the Offset Credits that SCE is electing to provide to Seller physically, and (2) the amount of the AB 32 Reimbursement Obligation SCE is electing to settle financially.

1. Limitation of Liability.

Notwithstanding anything to the contrary in the Agreement, SCE is not responsible for:

1. Any AB 32 Compliance Obligation imposed on Seller or the Project, providing any Offset Credits, or paying any AB 32 Compliance Obligation, to the extent any or all of the aforementioned are associated with Greenhouse Gas emissions during a Put Delivery Period that exceed the GHG Cap, that result from a Non-SCE Dispatch during a Put Delivery Period, and/or that occur outside of a Put Delivery Period;
2. Any taxes, fees, and/or other charges implemented by and imposed upon Seller or the Project pursuant to Title 17 of the California Code of Regulations, Section 95200, et. seq., (AB 32 Cost of Implementation Fee Regulation), or any similar taxes, charges and/or fees imposed on the Project or Seller pursuant to AB 32, including any regulations promulgated thereunder that are effective or scheduled to become effective as of the Effective Date; or
3. Any taxes, fees, charges and/or other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to any generating unit that is not a part of the Project.
4. Greenhouse Gas Compliance Covenants.
5. Seller covenants that (i) from the commencement of the Delivery Period until the end of the Term, it shall be registered with the CARB to hold Offset Credits as necessary to comply with its obligations under this Agreement, and (ii) throughout the Term, it shall comply with all requirements applicable to Seller and/or the Project under AB 32 and/or the GHG Regulations with respect to its obligations under this Agreement.
6. SCE covenants that (i) from the commencement of the Delivery Period until the end of the Term it shall be registered with the CARB to hold Offset Credits as necessary to comply with its obligations under this Agreement, (ii) throughout the Term, it shall comply with all requirements applicable to SCE under AB 32 and/or the GHG Regulations with respect to its obligations under this Agreement, (iii) it shall convey and deliver the Offset Credits to Seller free from all liens, claims, security interests and defects in title, (iv) each Offset Credit conveyed and delivered to Seller pursuant to this Agreement will be, at the time it is conveyed and delivered, validly issued and in force in accordance with the GHG Regulations, and (v) it will have good and marketable title to each Offset Credit conveyed and delivered to Seller, and that it will obtain and possess at the time conveyed and delivered, each such Offset Credit lawfully.
7. Seller shall furnish all documentation reasonably necessary to support the methodology and calculations of AB 32 Reimbursement Obligations and GHG Charge balances as they relate to Section 15.02 and Sections 15.03(b) and (c), which shall include, without limitation, any documentation reasonably requested by SCE to verify Seller’s calculations pertaining to GHG Charges, GHG Credits or revenues and Non-AB 32 GHG Credits.

At SCE’s request, Seller shall furnish information pertaining to the aggregate quantity of GHG Credits or Non-AB 32 GHG Credits or revenues allocated by CARB (and/or any other Governmental Authority) to Seller, any of Seller’s Affiliates, and/or the Generating Unit(s) for Greenhouse Gas attributable to the Project during the Delivery Period (or any portion thereof).

1. Suspension, Repeal or Supersedence of AB 32; Change in AB 32.

Notwithstanding anything to the contrary in this Agreement, if AB 32 is suspended or repealed, or superseded by any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions by the Project, then, as of the effective date of such suspension, repeal or supersedence, Sections 15.03 and 15.05(b) will no longer be in force or effect on a going forward basis; *provided* that subject to and in accordance with the terms of this Agreement, SCE shall be liable to Seller for compensating Seller for Seller’s AB 32 Compliance Obligation, if any, imposed on Seller for with respect to any SCE dispatch of the Project before such suspension, repeal or supersedence, unless such obligation has been suspended, repealed or superseded. To the extent SCE has provided compensation toward Seller’s AB 32 Compliance Obligation under AB 32, and that obligation is subsequently suspended or repealed, or superseded by any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions, then Seller shall return any such compensation in a timely manner to SCE.

If a Change in AB 32 occurs, then either Party, on Notice, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the balance of benefits, burdens and obligations set forth in this Agreement as of the Effective Date.

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

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

In addition to any Notices provided above, Seller shall provide Notice to SCE as soon as practicable in the event that Seller believes a Change in AB 32 has occurred.

1. Governmental Charges During Put Delivery Periods.

For any Put Delivery Period, Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority (“Governmental Charges”) on or with respect to the Product at or before the Energy Delivery Point, and SCE shall pay or cause to be paid all Governmental Charges on or with respect to Product from the Energy Delivery Point. In the event Seller is required by Applicable Laws 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 Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, SCE may deduct the amount of any such Governmental Charge from any amounts due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

# ARTICLE SIXTEEN

# FUEL MANAGER AND PAYMENTS (PUT DELIVERY PERIODS)

1. SCE’s Fuel Responsibilities.
2. Fuel Management. During a Put Delivery Period, SCE shall act as Seller’s “Fuel Manager” subject to the limitations set forth herein. As Seller’s Fuel Manager, SCE shall be responsible for managing, purchasing, nominating, scheduling, and transporting all the Natural Gas Requirements of each Generating Unit, whether operational or otherwise, to the Gas Delivery Point.
3. Start-Up Fuel. During a Put Delivery Period, SCE shall provide the Start-Up Fuel for each Start-Up unless specified otherwise in this Agreement.
4. Aborted Start-Up Fuel. During a Put Delivery Period, if SCE aborts a Start-Up before a Generating Unit achieves a full Start-Up, then SCE shall provide the Start-Up Fuel prorated by the amount of time the Generating Unit was in Start-Up. Aborted Start-Up Fuel (“ASUF”) will be calculated as follows:

where:

SUF = the applicable Start-Up Fuel per Appendix 9.05

ASUT = the Start-Up time duration in minutes prior to being aborted

SUT = the applicable Start-Up Time in minutes per Appendix 9.05

1. Transition Fuel. During a Put Delivery Period,SCE shall provide the Transition Fuel for each MSG Transition unless specified otherwise in this Agreement.
2. Seller’s Fuel Responsibilities.
3. Maintenance of Equipment. Seller shall take any and all action within its control that is necessary to receive the Natural Gas Requirements (or any portion thereof) at the Generating Unit(s) in order to generate and deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control that must be used to deliver the Natural Gas Requirements (or any portion thereof) to the Generating Unit(s).
4. Agreements in Effect. Seller shall ensure that the Gas Transportation Contract, Contracted Marketer Agreement, and/or Master Services Contract, are in effect at all times during the Delivery Period.
5. Seller Initiated Test. Seller shall be responsible for all costs (including Gas Costs) associated with a Seller Initiated Test as set forth in Article Seven.
6. [Intentionally omitted].
7. [Intentionally omitted].
8. Title, Possession, and Risk of Loss of Natural Gas.
9. SCE. During a Put Delivery Period, SCE shall hold title to, possession of, and risk of loss of the Natural Gas Requirements up to the Gas Delivery Point. SCE shall be deemed to have exclusive control and possession of the Natural Gas Requirements and responsibility for any damage or injury caused before the Natural Gas Requirements are delivered to the Gas Delivery Point.
10. Seller. During a Put Delivery Period, Seller shall have title to, possession of, and risk of loss of the Natural Gas Requirements at and after the Gas Delivery Point. Seller shall be deemed to have exclusive control and possession of the Natural Gas Requirements and responsibility for any injury or damage caused at and after the Natural Gas Requirements are received at the Gas Delivery Point.
11. Seller Holds Title for SCE’s Benefit. Notwithstanding Sections 16.05(a) and 16.05(b), during a Put Delivery Period, Seller shall at all times hold title to the Natural Gas Requirements, excluding natural gas used for a Non-SCE Dispatch, for the benefit of SCE.
12. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party from and against any claims arising from or out of any event, circumstance, act, or incident first occurring or existing during the period when control and title to the Natural Gas Requirements is vested in such Party in accordance with Sections 16.05(a) and 16.05(b).
13. Gas Transportation.

The SoCalGas Tariff shall define and set forth the manner in which the Natural Gas Requirements are to be transported to the Gas Delivery Point. During a Put Delivery Period, SCE and Seller agree to provide to each other, in as prompt a manner as reasonable, all information necessary to permit scheduling pursuant to and in compliance with the SoCalGas Tariff.

1. Gas Transportation Contracts. During a Put Delivery Period, Seller’s Gas Transportation Contract shall be used to transport the Natural Gas Requirements to the Gas Delivery Point.
2. Seller’s Transportation Contract Obligations. Prior to the Initial Delivery Date, Seller shall enter into an agreement with SoCalGas for a Gas Transportation Contract that shall be maintained in full force and effect during the entire Delivery Period. SCE shall have the right to review and consent to the form and substance thereof and to select the rate option therein prior to Seller’s execution and delivery of such Gas Transportation Contract, such consent not to be unreasonably withheld.
3. Seller covenants that, no later than thirty (30) days before the commencement of the Delivery Period, it shall have in full force and effect, and shall provide to SCE a copy of, the Gas Transportation Contract, and shall maintain such Gas Transportation Contract in full force and effect throughout the Delivery Period.
4. If the Gas Transportation Contract is set to expire or terminate for any reason during the Delivery Period, Seller shall (subject to SCE’s prior review and approval) either:
5. extend such Gas Transportation Contract thirty (30) days prior to its expiration or termination; or
6. enter into a new Gas Transportation Contract under similar terms and conditions.
7. Contracted Marketer.
8. Prior to the start of a Put Delivery Period and throughout the Put Delivery Period, Seller shall:
9. designate SCE as its Contracted Marketer (“CM”);
10. take all actions to execute and deliver all documents required by SoCalGas to authorize SCE to act as Seller’s CM during the Put Delivery Period; and
11. take all actions required by SoCalGas to authorize SoCalGas to notify SCE of any gas curtailment, disruption, or any other emergency condition, including but not limited to adding SCE to the Seller’s Commercial/Industrial Customer Information Authorization form CIA-1B for the duration of the Put Delivery Period.
12. During any Put Delivery Period, Seller shall not perform for itself the duties of CM, authorize, designate or allow any other party (other than SCE) to act as CM, and not revoke SCE’s designation to act as CM.
13. Prior to the start of a Put Delivery Period, SCE shall take all actions required by SoCalGas to accept Seller’s designation and to otherwise qualify SCE as a CM. SCE shall have the right to deliver such designation documents to SoCalGas at any time prior to the beginning of the Put Delivery Period.
14. Prior to the expiration of a Put Delivery Period, SCE and Seller shall promptly take all actions required by SoCalGas to terminate SCE’s responsibilities as CM effective at the expiration of the Put Delivery Period.
15. Natural Gas Imbalances
16. Seller shall use commercially reasonable efforts to ensure that there are no natural gas imbalances associated with the Gas Transportation Contract at the commencement of the first calendar day of a Put Delivery Period, and shall indemnify SCE for any natural gas imbalances, including all costs and penalties associated with the Gas Transportation Contract that have occurred prior to the Put Delivery Period.
17. During the Delivery Period, SCE shall use commercially reasonable efforts to manage all natural gas imbalances associated with the Generating Unit(s).
18. SCE shall use commercially reasonable efforts to ensure that there are no natural gas imbalances associated with the Gas Transportation Contract at the expiration of a Put Delivery Period and, except for those natural gas imbalances that are the responsibility of Seller as set forth in this Agreement, shall indemnify Seller for any natural gas imbalances, including all costs and penalties, associated with the Gas Transportation Contract that occur during SCE’s term as CM. Seller shall indemnify SCE for any natural gas imbalances that are the responsibility of Seller after the end of the Put Delivery Period or after an Early Termination Date.
19. Except as otherwise set forth in this Agreement, all gas imbalance penalties and charges incurred during a Put Delivery Period shall be for the account of SCE.
20. Imbalance penalties and charges that are Seller’s responsibility will be aggregated and billed to Seller on a monthly basis; *provided* that if SCE’s Pool Imbalance Penalty for a month is less than the aggregate amount of imbalance penalties or charges allocated to Seller for that month, Seller shall pay SCE’s Pool Imbalance Penalty.
21. Each Party agrees to reimburse or pay the other Party for any imbalance charge or penalty imposed by SoCalGas to one Party but which should be allocated to the other Party under this Agreement.
22. SoCalGas Tariff Changes.
23. If the SoCalGas Tariff is modified or replaced, or if any new provisions applicable to penalty or imbalance charges are added, then such modified, replaced, or new provisions will govern SCE’s calculation of such penalties or imbalance charges at the time of the change.
24. If any changes in the SoCalGas Tariff structure are implemented (including the restructuring of firm transportation) that modify or restructure the tariff rates and alter, to the material detriment of either Party, the balance of economic benefits and burdens that the Parties agreed to under this Agreement as of the Effective Date, then, either Party may provide Notice to such effect and the Parties shall negotiate in good faith to amend this Agreement to implement those changes as necessary to preserve the balance of economic benefits and burdens, or to alleviate any such material detriment. If the Parties fail to agree upon an appropriate amendment to reflect the changes within thirty (30) days of the date of the Notice, the dispute resolution procedures under Article Twenty-Seven shall apply.
25. Fuel Costs, Charges, and Payments.

In its role as Fuel Manager, SCE shall be responsible for the Gas Costs associated with providing the Natural Gas Requirements to the Gas Delivery Point during a Put Delivery Period; *provided*, that Seller shall be responsible for all Gas Costs arising out of or pertaining to: (1) any Heat Rate Adjustment Payments owed to SCE by Seller; (2) any costs arising out of or pertaining to a Seller’s Gas Event or Non-SCE Dispatch; and (3) any RA Delivery Period.

1. Payment Netting. If SCE pays any Gas Costs which are Seller’s responsibility under this Agreement, SCE may deduct the amount of such Gas Costs from any amounts due to Seller pursuant to the terms of this Agreement.
2. Gas Delivery Charge. Each month during a Put Delivery Period, SCE shall pay the Gas Delivery Charge to Seller to cover transportation costs under the Gas Transportation Contract. The Gas Delivery Charge is the sum of all the delivery charges (Transport Cost multiplied by the Daily Gas Burn), expressed in US$, for each calendar day in that month that SCE dispatched Scheduled Energy.

The “Transport Cost” is the sum of the following SoCalGas rate components (or any additional, replacement or successor components mutually agreed to in writing by the Parties) for transportation of natural gas to the Gas Delivery Point expressed in $/MMBtu:

1. the applicable rate(s) set forth in the Gas Transportation Contract; and
2. if applicable, SoCalGas Schedule No. G-MSUR, Transported Gas Municipal Surcharge.

Furthermore, Seller agrees that it is solely responsible for the “Surcharge to Fund the CPUC Utilities Reimbursement Account” that is set forth in SoCalGas Rate Schedule No. G-SRF. Seller bears sole responsibility for obtaining an exemption from SoCalGas for the Rate Schedule No. G-SRF and Seller shall pay all or any portion of the surcharge for which it does not obtain the exemption. SCE shall have no liability for the surcharge and Seller shall indemnify, defend, and hold SCE harmless against any costs or losses of SCE resulting from the surcharge set forth in Rate Schedule No. G-SRF.

1. Heat Rate Adjustment Payment. Each month during a Put Delivery Period, SCE shall aggregate all Deviations for the month to determine the monthly Heat Rate Adjustment Payment (“HRAP”) as shown below. A positive value for the HRAP represents a payment to be made from SCE to Seller, and a negative value represents a payment to be made from Seller to SCE. The HRAP and the Daily Deviation Quantity (“DDQ”) shall exclude gas quantities related to Seller’s Gas Events, which will be calculated pursuant to Section 16.09(b).
2. 

where:

n = the applicable calendar day in the month.

m = the total number of calendar days in the applicable month.

1. *Deviationsn* is calculated for each calendar day as follows:

If DDQn > 0, then Deviationsn = (Gas Index\*DDQn)

If DDQn < 0, then Deviationsn = (Delivered Gas Cost\*DDQn)

where:

Delivered Gas Cost = The daily cost of natural gas, expressed in $/MMBtu, equal to the sum of the Gas Index and the Transport Cost for the applicable calendar day.

1. *DDQn* is calculated for each calendar day as follows:

DDQn = RNGQn – Daily Gas Burnn

where:

*RNGQn =* Required Natural Gas Quantityn, expressed in MMBtu, for the applicable calendar day.

*Daily Gas Burnn =* the Daily Gas Burn for the applicable calendar day

1. *RNGQn* , the Required Natural Gas Quantity for each calendar day expressed in MMBtu, is calculated for each calendar day as follows*:*

where:

*i* = the applicable Settlement Interval in the applicable calendar day.

*j* = the total number of Settlement Intervals in the applicable calendar day.

*QDEi* = the MWh of Qualifying Delivered Energy for the applicable Settlement Interval.

*HRi =* the Heat Rate for the applicable Settlement Interval derived by taking the lesser of *HRSE* and *HRQDE*.

*HRSE* = the Heat Rate specified in Appendix 16.08 applicable for the product of the Scheduled Energy for such Settlement Interval and the number of Settlement Intervals in one (1) hour.

*HRQDE* = the Heat Rate specified in Appendix 16.08 applicable to the product of the Qualifying Delivered Energy for such Settlement Interval and the number of Settlement Intervals in one (1) hour.

*StartUpFuel* = any Start-Up Fuel required during the relevant calendar day; *provided* that, in the event the duration of a Start-Up extends past one calendar day, then all of the Start-Up Fuel will be allocated to the calendar day associated with the first non-zero hourly schedule.

*Transition Fuel* = any Transition Fuel required for all MSG Transitions in the relevant calendar day; provided that, in the event the duration of an MSG Transition extends past one calendar day, then all of the Transition Fuel will be allocated to the calendar day associated with the start of the transition.

1. Gas Index. If a Market Disruption Event occurs, during a Put Delivery Period, the Gas Index for the affected calendar day(s) shall be determined by reference to the Gas Index specified for the first calendar day thereafter on which no Market Disruption Event exists; *provided*, however, if the Gas Index is not so determined within three (3) Business Days after the first calendar day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Gas Index (or a method for determining a Gas Index), and if the Parties have not so agreed on or before the twelfth (12th) Business Day following the first calendar day on which the Market Disruption Event occurred or existed, then the Gas Index shall be determined in good faith by taking the average of the price quotations for the relevant commodity and relevant Business Days that are obtained from no more than two (2) market quotes from a Reference Market-Maker selected by each Party.
2. Seller’s Gas Event.

“Seller’s Gas Event” is any event, circumstance, change or condition related to the Generating Unit(s) during a Put Delivery Period, whether by reason of Force Majeure or otherwise, including a Non-SCE Dispatch or a Forced Outage that may affect the availability of any Generating Unit, or any other operational constraint affecting any Generating Unit that may increase or decrease the Natural Gas Requirements of such Generating Unit. A Seller’s Gas Event shall not include any event, circumstance, change or condition not related to the Generating Unit(s), including failure of any entity providing electric transmission service to the Generating Unit(s).

1. Notification. Seller shall notify SCE immediately upon learning of the occurrence of a Seller’s Gas Event. Upon receiving such notification, SCE shall use commercially reasonable efforts to manage its gas supply and transportation arrangements for the purpose of minimizing daily or monthly pipeline or system pool imbalance charges or penalties.
2. Seller’s Fuel Costs. Seller will be responsible for the fuel costs related to a Seller’s Gas Event which shall be calculated as the sum of the following three components:
3. Seller’s Gas Cost,
4. any Seller’s Imbalance Penalties, and
5. any taxes.

To the extent SCE is assessed any such costs and charges, SCE may deduct the amount of such costs and charges from any amounts otherwise due to Seller pursuant to the terms of this Agreement.

1. Seller’s Imbalance Penalties. The “Seller’s Imbalance Penalty” is any imbalance penalties that SoCalGas has the authority to allocate pursuant to the SoCalGas Tariff, including but not limited to the sum of (i), (ii), and (iii) below:
2. Schedule G-IMB and Rule 30(F). If a Seller’s Gas Event causes or contributes to any imbalance, including a monthly imbalance penalty or a five-day minimum delivery requirement pursuant to Schedule G-IMB (Transportation Imbalance Service) and/or a daily imbalance penalty pursuant to Rule 30 “Section F, Nominations in Excess of System Capacity”, as set forth in Rule 30 (Transportation of Customer-Owned Gas) of the SoCalGas Tariff, and any new or successor imbalance penalties established by SoCalGas in effect at the time of the Seller’s Gas Event, then Seller shall be responsible for the imbalance charges or penalties that would be incurred by SCE as a result of such Seller’s Gas Event.
3. Rule 23. If a Seller’s Gas Event causes or contributes to the imposition of a curtailment violation penalty, including those set forth in Rule 23 (Continuity of Service and Interruption of Delivery) of the SoCalGas Tariff, and any new or successor imbalance penalties established by SoCalGas, in effect at the time of the Seller’s Gas Event, then Seller shall be responsible for the penalties that would be incurred by SCE as a result of such Seller’s Gas Event.
4. Rule 30(G). If a Seller’s Gas Event causes or incurs a daily balancing standby charge pursuant to “Section G. Winter Deliveries” as set forth in Rule 30 of the SoCalGas Tariff, and any new or successor winter imbalance penalties established by SoCalGas, in effect at the time of the Seller’s Gas Event, then Seller shall pay SCE the resultant daily balancing standby charge that would be incurred by SCE as a result of such Seller’s Gas Event.

# ARTICLE SEVENTEEN

# TOLLING (PUT DELIVERY PERIODS)

1. Tolling.

During any Put Delivery Period, SCE shall be entitled to all benefits resulting from the conversion of any Natural Gas Requirements into Delivered Energy, excluding any natural gas used for and during a Non-SCE Dispatch.

# ARTICLE EIGHTEEN

# CAISO AND NON-SCE DISPATCHES (PUT DELIVERY PERIODS)

1. CAISO Dispatch.

Except in order to effectuate a Seller Initiated Test, any award or dispatch of any Generating Unit by the CAISO during a Put Delivery Period for any reason (whether pursuant to an RMR Contract, must offer obligations, Energy dispatches or otherwise), shall be deemed to be a dispatch by SCE for purposes of this Agreement. The Energy dispatched shall be for SCE’s benefit hereunder, and SCE shall pay the costs of such CAISO awards and dispatches in accordance with the terms of this Agreement as if such dispatches were directed by SCE. SCE shall be entitled to receive and retain for its own account any and all CAISO revenues for such awards and dispatches, including any availability payments under an RMR Contract for any Generating Unit. Except in order to effectuate a Seller Initiated Test, a dispatch by the CAISO during a Put Delivery Period shall not be considered a Non-SCE Dispatch pursuant to this Agreement. CAISO dispatches following any Seller Initiated Test pursuant to Article Seven shall not obligate SCE for any associated costs incurred in starting any Generating Unit for, or operation during, such testing period.

1. Non-SCE Dispatch.

During any Put Delivery Period, Seller shall not start-up or operate any Generating Unit other than (a) pursuant to a Dispatch Notice, or (b) pursuant to a Non-SCE Dispatch. Seller shall, to the extent possible, notify SCE no later than 5:00 a.m. PPT at least two (2) Business Days in advance of the Trading Day of any start-up or operation pursuant to a Non-SCE Dispatch, and shall, except as otherwise required by Applicable Law or as otherwise provided for in this Agreement, delay such start-up or operation if requested by SCE. Seller shall indemnify, defend, and hold SCE harmless against the costs or losses of SCE resulting from a Non-SCE Dispatch, including all (i) charges, sanctions, and penalties imposed by CAISO, and (ii) Seller’s Gas Costs incurred pursuant to such start-up or operation, with Seller being responsible for Seller’s Gas Costs for each hour (with any partial hours being rounded up to the next full hour) of such Non-SCE Dispatch. Imbalance Energy revenues net of any charges, sanctions, and penalties imposed by CAISO for a Non-SCE Dispatch shall be for Seller’s account.

# ARTICLE NINETEEN

# SCHEDULING COORDINATOR (PUT DELIVERY PERIODS)

1. SCE as Scheduling Coordinator.

At least thirty (30) days prior to the beginning of a Put Delivery Period, Seller shall take all actions and execute and deliver to SCE and the CAISO all documents necessary to authorize or designate SCE as Scheduling Coordinator (“SC”) for the Project with the CAISO effective as of the beginning of the Put Delivery Period. If SCE is not fully authorized as the SC for the Project as of the beginning of the Put Delivery Period and such delay is:

1. due solely to Seller’s failure to comply with the terms of this Agreement and the Tariff related to authorizing SCE as SC, then until SCE is fully authorized as the SC for the Project, (i) SCE shall be entitled to the Product, but (ii) Seller shall not be entitled to any payment under this Agreement;
2. due solely to SCE’s failure to comply with the terms of this Agreement and the Tariff related to authorizing SCE as SC, then, until SCE is fully authorized as the SC for the Project, (i) SCE shall not be entitled to the Product, and (ii) the Generating Unit(s) shall be deemed to be available for the amount of the Contract Capacity that is unavailable or undeliverable due to such failure; or
3. due to either (x) CAISO failure to perform the actions necessary to authorize SCE as SC, or (y) the failure of both Parties to comply with the terms of this Agreement and the Tariff with respect to authorizing SCE as SC, then, until SCE is fully authorized as the SC for the Project, (i) SCE shall not be entitled to the Product, and (ii) Seller shall not be entitled to any payment under this Agreement.

During a Put Delivery Period, Seller shall not authorize or designate any other party to act as SC, nor shall Seller perform for its own benefit the duties of SC, and Seller shall not revoke SCE’s authorization to act as SC unless agreed to in writing by SCE. SCE shall submit bids and schedules to the CAISO in accordance with the Tariff. Seller shall reasonably cooperate with SCE in performing any actions necessary prior to the start of any Put Delivery Period to allow each Generating Unit to be (i) dispatched (or otherwise scheduled to operate) for the first day of the Put Delivery Period and (ii) reported to or scheduled with the CAISO pursuant to the Tariff, either through SLIC or as otherwise required by the CAISO, as being in an outage at the commencement of the Put Delivery Period. All CAISO costs and revenues (including credits and other payments) associated with a dispatch of the Generating Unit on the first day of a Put Delivery Period that are received by Seller or their SC on the day prior to the Put Delivery Period shall be for SCE’s account.

Furthermore, no later than two (2) weeks prior to the first day of a Put Delivery Period, Seller shall take all actions necessary with the CAISO and SCE to ensure that by the day immediately prior to the first (1st) day of the Put Delivery Period, the Master File and, if applicable, the RMR Contract reflect the values that SCE deems appropriate based on the Operating Restrictions under this Agreement. If, at any time prior to the termination of this Agreement, any action or inaction of Seller, or a condition of any Generating Unit that could result in a revision to the Master File or to the operating restrictions set forth in an RMR Contract, then Seller shall promptly give Notice to SCE and shall use all reasonable efforts to maintain the Operating Restrictions exactly as they existed on the Effective Date.

Seller is responsible for and shall pay SCE an “SC Set-Up Fee” equal to the initial costs (including the costs of SCE employees or agents) SCE incurs, as determined in SCE’s sole discretion, as a result of SCE being designated as the Project’s Scheduling Coordinator for the first Put Delivery Period, including the costs associated with the registration of the Project with the CAISO, and the installation, configuration, and testing of all equipment and software necessary for SCE to act as Scheduling Coordinator or to Schedule the Project; *provided*, the SC Set-up Fee shall not exceed fifty thousand dollars ($50,000.00) and shall not be applicable to any other Put Delivery Period other than the first.

1. CAISO Notices.

Subject to Seller complying with its obligations under this Agreement, SCE, as SC during a Put Delivery Period, shall submit all notices and updates required under the Tariff regarding each Generating Unit’s status to the CAISO. Seller will comply with Article Twenty of this Agreement in providing such notices and updates.

1. CAISO Settlements.

As SC during a Put Delivery Period, SCE shall be responsible for all settlement functions with the CAISO related to the Project, including, if applicable, as RMR settlement coordinator in accordance with the terms of this Agreement. Seller shall cooperate with SCE in SCE’s performance of any settlement functions, and Seller shall promptly deliver to SCE all Project data and any correspondence or communications with CAISO related to the Project, including any invoices or settlement data, in the format reasonably requested by SCE.

1. Terminating SCE’s Designation as SC.

At least thirty (30) days prior to the expiration of a Put Delivery Period, or in the event of an Early Termination Date being declared two (2) Business Days prior to the Early Termination Date, the Parties will take all actions necessary to terminate the designation of SCE as SC as of the hour ending 12:00 a.m. PPT on the final date of the Put Delivery Period (“SC Replacement Date”). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new SC to replace SCE effective as of the SC Replacement Date, and (ii) cause its newly designated SC to submit a letter to the CAISO accepting the designation; and (b) SCE shall submit a letter to the CAISO resigning as SC effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement SC.

1. Duties Related to Resource Adequacy Resources.

If a Generating Unit is designated as a Resource Adequacy Resource during a Put Delivery Period, the following will apply:

1. Seller shall take all actions necessary in order to allow SCE to perform its duties as an SC for a Resource Adequacy Resource, including, but not limited to, (i) providing all information needed for SCE to include the Project on SCE’s Supply Plan, and (ii) providing any information requested by SCE related to the Project that is required to be provided to the CAISO or CPUC in order for SCE to comply with the Tariff or other Applicable Laws; and
2. SCE shall use the Resource Adequacy Availability Management (“RAAM”) software, or any successor application, to allow Seller to utilize the substitution rules found in Section 40.9.4.2.1 of the Tariff (“Substitution Rules”); *provided*, (i) SCE is not required to use or change its utilization of SCE owned or controlled assets or market positions, to allow Seller to utilize the Substitution Rules, (ii) Seller, at its own expense, provides substitute capacity that complies with the Substitution Rules, (iii) Seller provides, as soon as practicable, but no later than 5:00 a.m. PPT the day bids are due in the IFM for the day Seller seeks to substitute capacity for, all information to SCE needed to substitute capacity pursuant to the Substitution Rules, including, but not limited to, the substitution start and end dates, the Resource ID for the substitute unit, a short description of the outage, the outage ID from SLIC application, and the amount of capacity to be substituted, (iv) SCE’s duties to take action under this subsection (b) are solely limited to inserting one (1) substitution request through RAAM per day; and (v) Seller causes, and is responsible for, the SC of the generating unit Seller seeks to substitute with to cooperate with SCE in making a substitute request and SCE is not responsible or liable for any costs, damages, penalties, charges, or liabilities (“Substitution Costs”) associated with such SC’s failure to cooperate or take the proper action; *provided, further*, if the CAISO develops a tool, application, or other means, for Seller to submit its own substitution request, then SCE shall not be required to take any action under this Section 19.05 to allow Seller to utilize the Substitution Rules. In no event shall SCE be responsible or liable for any Substitution Costs associated with Seller’s inability to utilize the Substitution Rules or rejection by the CAISO of any substitute capacity for any reason, including, but not limited to, any RAAM software limitations or failures, unless SCE is required to take action and such Substitution Costs or rejection result solely from SCE’s actions.

Seller shall provide the information set forth in Section 19.05 through the Outage Management System. If an electronic submittal via the Outage Management System is not available, or is not possible for reasons beyond a Party’s control, Seller may provide such information through (in order of preference) electronic mail, facsimile transmission or, if such submissions are not available, then telephonically to the SCE personnel designated to receive such communications as identified in Appendix 20.05 followed by an electronic mail or facsimile transmission of such information as soon as practicable.

SCE may list the Resource Adequacy capacity associated with the Project as   
Non-Specified RA Replacement Capacity or Specified RA Replacement Capacity.

1. SDD Charge and SDD Administrative Charge.

Prior to UDP Implementation, (i) if the Qualifying Delivered Energy is not equal to Scheduled Energy in any Settlement Interval during a Put Delivery Period, Seller may be subject to a Scheduling and Delivery Deviation Charge (“SDD Charge”) or Scheduling and Delivery Deviation Administrative Charge (“SDD Administrative Charge”) calculated as set forth in Section 19.06(a) and 19.06(b) below, and (ii) all CAISO payments and credits resulting from Uninstructed Imbalance Energy during a Put Delivery Period shall be for SCE’s account.

1. Calculation of SDD Charge. Seller shall pay SCE an SDD Charge if, during any Settlement Interval during a Put Delivery Period, the Qualifying Delivered Energy is less than the Performance Tolerance Band Lower Limit for such Settlement Interval. The SDD Charge is calculated as follows:

If A < B, then SDD Charge = 0.5 \* (B – A) \* C

where:

A = Qualifying Delivered Energy for the Settlement Interval;

B = Performance Tolerance Band Lower Limit; and

C = SDD Price.

Upon CAISO’s implementation of UDP, or any subsequent changes regarding the calculation of UDP, the Parties agree to negotiate in good faith to amend the SDD Charge calculation as necessary to maintain the economic balance of benefits and burdens contemplated under this Section 19.06.

1. Calculation of SDD Administrative Charge. Seller shall pay SCE an SDD Administrative Charge if, during any Settlement Interval during a Put Delivery Period, Delivered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, for such Settlement Interval. The SDD Administrative Charge is calculated as follows:

SDD Administrative Charge = Absolute Value (E – D) \* F

where:

D = Delivered Energy for the Settlement Interval;

E = Scheduled Energy for the Settlement Interval; and

F = SDD Admin Price.

1. Allocation of Charges Related to Generator Replace Tariff Provisions.

If the Generating Unit(s) are designated as a Resource Adequacy Resource during a Put Delivery Period and Seller requests to place the Generating Unit(s) on a Planned Outage, SCE, as the SC, will submit a request to the CAISO for such a Planned Outage, and if either a Governmental Authority or the Tariff requires that the Generating Unit(s) be replaced with a resource that is not a Resource Adequacy Resource in order for the Planned Outage being requested to be approved, Seller shall be responsible for replacing the Generating Unit(s) with a resource that is not a Resource Adequacy Resource. SCE agrees that in such a circumstance, upon the request of Seller, SCE will take reasonable administrative actions to facilitate such a replacement by Seller; *provided* SCE shall not be required to take any action, or use or change its utilization of its owned or controlled assets or market positions, to allow Seller to replace the Generating Unit(s) with a resource that is not a Resource Adequacy Resource.

# ARTICLE TWENTY

# DISPATCH NOTICES AND OPERATING RESTRICTIONS (PUT DELIVERY PERIODS)

1. Availability Notice.

For each Operating Day during a Put Delivery Period, Seller shall provide to SCE using the SCE-provided web-based system (“Outage Management System”) an hourly schedule of the Available Capacity (for both Energy and Ancillary Services) that each Generating Unit is expected to have for each hour of such Operating Day, no later than two (2) Business Days before the Trading Day applicable to such Operating Day (the “Availability Notice”). During holiday periods Seller may be required to provide the Availability Notice earlier than two (2) Business Days as reflected in SCE’s “Annual Scheduling/Planning Calendar”; an example of which is attached as Appendix 22.02. Seller must update SCE immediately using the Outage Management System if the Available Capacity of any Generating Unit changes or is likely to change after the Availability Notice is submitted. Seller must follow up all such updates through the Outage Management System with telephonic updates to SCE’s personnel designated in Appendix 20.05 to receive such communications. Seller shall accommodate SCE’s reasonable requests for changes in the time or form of delivery of the Availability Notices. If an electronic submittal via the Outage Management System is not available, or is not possible for reasons beyond a Party’s control, Seller may provide Availability Notices using the form attached in Appendix 20.01 by (in order of preference unless the Parties agree to a different order) electronic mail, facsimile transmission or, as a last resort, telephonically to SCE’s personnel designated in Appendix 20.05 to receive such communications.

1. Dispatch Notices.

During a Put Delivery Period, SCE will have the right to dispatch each Generating Unit up to PMAX, seven days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices to Seller electronically (in the form attached in Appendix 20.02 or other available form agreeable to SCE), and subject to the requirements and limitations set forth in this Agreement. Subject to Section 20.05, each Dispatch Notice will be effective unless and until SCE modifies such Dispatch Notice by providing Seller with an updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond SCE’s control, SCE may provide Dispatch Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller’s personnel designated in Appendix 20.05 to receive such communications. In addition to any other requirements set forth in this Agreement, all Dispatch Notices will be made in accordance with market notice timelines as specified in the Tariff.

1. Start-Up Notices.

If a Dispatch Notice includes a Start-Up, Seller shall notify SCE electronically when a Generating Unit has initiated a turbine start, and is synchronized and at Minimum Load ready to be dispatched to the required output. Seller shall provide an electronic or facsimile copy of a completed Start-Up Notice, in the form attached to this Agreement in Appendix 20.03, to SCE within twenty-four (24) hours of the Start-Up. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Grid Control Center, if applicable.

1. MSG Transition Notices.

If a Dispatch Notice results in an MSG Transition, Seller shall notify SCE electronically of all such MSG Transitions and the configuration of the Generating Unit(s) under such MSG Transitions via the Outage Management System. If the Outage Management System is not available, Seller shall submit such notice via electronic mail, facsimile transmission or, if such submissions are not available, then telephonically to the SCE personnel designated to receive such communications as identified in Appendix 20.05 followed by an electronic mail or facsimile transmission notice of such availability as soon as practicable. Seller shall provide such notice within twenty-four (24) hours of last MSG Transition resulting from the respective Dispatch Notice.

1. Operating Restrictions.
2. Subject to Section 7.04, all Operating Restrictions associated with the Product are specified on Appendix 1.02. In providing a Dispatch Notice, SCE shall use reasonable efforts to comply with the applicable Operating Restrictions. If SCE submits a Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall immediately notify SCE of the non-conformity and SCE will modify its Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as SCE submits a modified Dispatch Notice, Seller shall deliver the Product in accordance with the Operating Restrictions, and the Generating Unit will not be deemed to be unavailable nor will SDD Administrative Charges be applied for the failure to deliver in accordance with the non-conforming Dispatch Notice, but only to the extent such Generating Unit was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Restrictions.
3. Notwithstanding anything to the contrary in this Agreement, Section 20.05(a), or the Operating Restrictions, SCE is permitted to issue a Dispatch Notice that dispatches a Generating Unit to its PMAX and SCE is not required to modify any non-conforming Dispatch Notice that dispatches a Generating Unit to its PMAX; *provided*, in instances where the PMAX is greater than the maximum generation capacity set forth in the Operating Restrictions, Seller shall deliver the Product in accordance with the Operating Restrictions, and the Generating Unit will not be deemed to be unavailable nor will SDD Administrative Charges be applied for the failure to dispatch but only to the extent such Generating Unit was otherwise available but could not be dispatched because of its inability to operate outside of the Operating Restrictions.
4. Communication Protocols.

The Parties shall agree to the communication protocols outlined in Appendix 20.05 to facilitate the exchange of information between the Parties.

1. Writing Requirements.

In documenting and confirming Dispatch Notices, conversations between the Parties’ personnel and contractors may be recorded by tape or other electronic means and any such recording will satisfy any “writing” requirements under Applicable Laws.

# ARTICLE TWENTY-ONE

# METERING, COMMUNICATIONS, and TELEMETRY (PUT delivery PERIODS)

1. SCE Access.

All communication, metering, telemetry, and associated generation operation equipment will be centralized into the Project’s Distributed Control System (“DCS”). Seller shall configure each Generating Unit’s DCS so that SCE may access it during any Put Delivery Period via the Generation Management System (“GMS”) from SCE’s Generation Operations Center (“GOC”). Seller shall ensure that the access link will provide a monitoring and control interface to enable automatic dispatch of each Generating Unit. Seller shall link the systems via an approved SCE communication network, utilizing existing industry standard network protocol, as approved by SCE. The connection will be bidirectional in nature and used by the Parties to exchange all data points to and from the GOC.

1. Control Logic.

Seller will ensure that each Generating Unit’s DCS control logic will be configured to control the Generating Unit in multiple plant configurations. Each Generating Unit’s control logic will incorporate control signals from multiple locations to perform Energy dispatch, Ancillary Services, and Supplemental Energy functions. Control logic will perform all coordinated megawatt control and Automatic Generation Control (“AGC”) independently for each Generating Unit.

1. Delivery of Data.

At least thirty (30) days prior to the Expected Initial Delivery Date, Seller shall provide SCE with all facility and metering information necessary to communicate with SCE as may be requested by SCE, including, but not limited to, the information set forth in Appendix 21.03.

1. Satellite Communication System.

Seller is responsible for installing, testing, commissioning and maintaining the Satellite Communications System (“SCS”) at the Project in accordance with instructions provided by SCE and the SCS vendor. Seller shall grant SCE reasonable access to the Site for routine calibration and maintenance of the SCS during a Put Delivery Period.

1. Gas Meter.

Seller must install (i) a fully functioning SoCalGas Billing Meter at the interconnection between the Project and the SoCalGas system and a flow meter at each Generating Unit or, in the alternative, (ii) a fully functioning SoCalGas Billing Meter at the interconnection between each Generating Unit and the SoCalGas system, prior to the Initial Delivery Date.

1. SCE Access.

Seller shall take all actions and execute all documents reasonably necessary to grant SCE access to the metering, communications, and telemetry systems specified in this Article Twenty-One during a Put Delivery Period.

# ARTICLE TWENTY-TWO

# OUTAGES

1. Planned Outages.

Two (2) years prior to the Expected Initial Delivery Date, and thereafter no later than January 1, April 1, July 1 and October 1 of each calendar year during the Term, Seller shall submit to SCE each Generating Unit’s proposed schedule of Planned Outages (“Outage Schedule”), via the Outage Management System, covering every day of the following twenty-four (24) months that is within the Delivery Period. If the Outage Management System is not available or the obligation to submit such schedule occurs during a RA Delivery Period, Seller shall submit the Outage Schedule in substantially the form set forth in Appendix 22.01. Within twenty (20) Business Days after its receipt of an Outage Schedule, SCE shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, if consistent with Accepted Electrical Practices, accommodate SCE’s requests regarding the timing of any Planned Outage; *provided* that the CAISO agrees to such changed timing. In the event that SCE’s request to change the timing of any Planned Outage would result in Seller incurring incremental costs, or reduction in Monthly Capacity Payments, in excess of what would have been incurred without the Planned Outage timing change requested by SCE, within five (5) Business Days after receipt of SCE’s request Seller shall provide reasonable documentation to SCE of the costs and/or revenue impact that would be incurred by Seller and SCE may either agree to reimburse (subject to audit by SCE) Seller for such costs and revenue impact or withdraw its request for such change in Planned Outage timing. Seller shall cooperate with SCE to arrange and coordinate all Outage Schedules with the CAISO in compliance with the Tariff. Seller will communicate to SCE all changes to a Planned Outage and estimated time of return of each Generating Unit as soon as practicable after the condition causing the change becomes known to Seller. Planned Outages that will equal more than one hundred sixty-eight (168) hours in any calendar month, must be agreed to and coordinated in advance between the Parties.

1. No Planned Outages During Summer Months.

Unless agreed and coordinated in advance by the Parties, no outages shall be scheduled or planned from each May 1 through September 30 during the Delivery Period. In the event that Seller has a previously Planned Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

1. Notice of Forced Outages during Put Delivery Periods.

Seller shall communicate the occurrence of any Forced Outage during a Put Delivery Period utilizing SCE’s Outage Management System to enter outage information as required by Tariff Section 9.3.10.2 (or other successor Section), within ten (10) minutes of the commencement of the Forced Outage. Seller shall telephone SCE’s Generation Operations Center, within twenty (20) minutes of the Forced Outage, at the telephone number(s) listed in Appendix 20.05. If the CAISO imposes a sanction or penalty upon SCE as Seller’s SC due to Seller’s failure to timely provide SCE with a report of a Forced Outage or Planned Outage, Seller shall be responsible for such sanction or penalty.

1. Reports of Forced Outages or Planned Outages during Put Delivery Periods.

Seller shall promptly prepare and provide to SCE, using SCE-provided software or forms, all reports of Forced Outages or Planned Outages during Put Delivery Periods that SCE may reasonably require for the purpose of enabling SCE to comply with CAISO requirements or any Applicable Laws.

1. Inspection during Put Delivery Periods.

In the event of a Forced Outage during a Put Delivery Period, SCE shall have the right to inspect any Generating Unit and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with SCE during any such inspection.

# ARTICLE TWENTY-THREE

# FORCE MAJEURE

1. No Default for Force Majeure.

Subject to Section 8.02(f), neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement (except for obligations to pay money) when and to the extent failure of performance is caused by Force Majeure; *provided*, (a) a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused, and (b) there shall be no Available Capacity or A/S Availability for purposes of calculating any Reduced Monthly Energy Capacity Payment even if the unavailability is due to Force Majeure.

1. Force Majeure Claim.

Subject to Section 8.02(f), if, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected; *provided*:

1. the Claiming Party, no more than five (5) Business Days after the initial occurrence of the claimed Force Majeure, gives the other Party Notice describing the particulars of the occurrence;
2. the Claiming Party, within five (5) Business Days, of providing Notice of occurrence of the Force Majeure, provides evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;
3. the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and
4. as soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

# ARTICLE TWENTY-FOUR

# REPRESENTATIONS, WARRANTIES AND COVENANTS

1. Representations and Warranties of Both Parties.

As of the Effective Date and the Approval Date, each Party represents and warrants to the other Party that:

1. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
2. Except as provided in Section 2.02 and Article Five, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
3. The execution, delivery and performance of this Agreement are within its power, have been duly authorized by all necessary action (other than regulatory approval as set forth in Section 2.02) and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws applicable to it;
4. This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
5. It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which could result in it becoming Bankrupt;
6. There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
7. No Event of Default with respect to it has occurred and is continuing and no such Event of Default would occur as a result of its entering into or performing its obligations under this Agreement;
8. It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement;
9. It is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and
10. 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 all Product, as applicable, under this Agreement.
11. Representations and Warranties of Seller.

Seller represents and warrants to SCE that:

1. As of the Approval Date, Seller has Site Control.
2. As of the Effective Date and the Approval Date, to the best of Seller’s knowledge, each specification and description of each Generating Unit and the Project and the Product in Article One (and related Appendices) is true and correct.
3. As of the Initial Delivery Date, the Project is a New Resource.
4. Seller’s Affirmative Covenants.
5. Seller shall maintain and preserve its existence as a *[insert applicable corporate incorporation information]* formed under the laws of the State of *[XX]* and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
6. Seller shall, from time to time as requested by SCE, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of SCE with respect to its Security Interest furnished pursuant to this Agreement.
7. Seller shall ensure that no less than twenty percent (20%) of Seller’s aggregate costs to complete the initial development, engineering, procurement and construction of the Project are funded by equity contributions to Seller. The amount funded by equity contributions shall not be less than Ten Million Dollars ($10,000,000). The foregoing shall not impose any obligations that survive the Initial Delivery Date, *provided* that if SCE determines after the Initial Delivery Date that Seller breached this obligation with respect to any time prior to the Initial Delivery Date, SCE retains all rights under this Agreement, including, without limitation under Article Three, with respect to such occurrence;
8. Seller shall obtain, maintain and remain in compliance with all permits, interconnection agreements and transmission rights necessary to operate the Project and to provide the Product to SCE in accordance with this Agreement;
9. 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;
10. Seller shall provide and execute all documents and instruments reasonably necessary (including documents amending this Agreement in ways not materially adverse to Seller and documents reflecting compliance with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for SCE’s sole benefit through the Delivery Period;
11. Seller shall maintain Site Control throughout the period beginning on the Approval Date and ending on the last day of the Term;
12. Seller shall, throughout the Term, promptly provide SCE with Notice of any change in any of the specifications or descriptions set forth in Article One (and related Appendices);
13. Throughout any RA Delivery Period (i) Seller shall, and shall cause each Generating Unit’s SC to promptly (and in any event within one (1) Business Day of the time Seller or such SC receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Project as CPM Capacity, and (ii) in the event the CAISO makes such a designation Seller shall, and shall cause each Generating Unit’s SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation, provided that Buyer shall have the exclusive right to offer the Product and Project, or any portion thereof, to the CAISO as CPM Capacity;
14. With respect to any RA Delivery Period, Seller shall notify the SC of each Generating Unit that (i) Seller has transferred the Product to Buyer with respect to each day of each Showing Month, and that such SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Agreement, (ii) Seller is obligated to cause each Generating Unit’s SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadlines for each Compliance Showing, the applicable Expected Contract Quantity of such Generating Unit for each day of such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, that is to be submitted in the Supply Plan associated with this Agreement for the applicable period, and (iii) Buyer is entitled to the revenues set forth in Section 9.06, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues; and
15. With respect to any RA Delivery Period, Seller shall (i) provide all information needed for the Product to be shown on Supply Plans and Compliance Showings and to be used to satisfy RA Compliance Obligations, including, without limitation providing information with respect to the amount of Flexible Capacity and Inflexible Capacity available to be included in any applicable Supply Plan and Compliance Showing and (ii) provide any information requested by SCE related to the Project that is required to be provided to the CAISO or CPUC in order for SCE to comply with the Tariff or other Applicable Laws.
16. Seller’s Negative Covenants.
17. Seller shall not issue any Disqualified Stock, other than Disqualified Stock issued, in connection with the funding of the development, construction, operation, reconstruction, restoration or refinancing of the Project.
18. Except for (i) liens for the benefit of Lender, and (ii) liens cured or removed within thirty (30) days after their incurrence, 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 in the Site, the Project, or any part thereof or interest therein. Seller 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 Project, 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 Site, the Project or a material part thereof or interest therein. Seller shall promptly notify SCE of any attachment or imposition of any lien against Seller’s interest in the Site, the Project, or any part thereof or interest therein.
19. Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction and operation of the Project.
20. Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.
21. During any period during which a Seller is a Defaulting Party, Seller shall (i) not declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller, or (ii) otherwise make any distribution or equivalent payment to any Affiliate of Seller.
22. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, the Required Permits as collateral to any party other than to Lender or Lender’s agent without SCE’s prior written consent, which consent may be granted or withheld in SCE’s sole discretion.
23. Seller shall not directly or indirectly pledge or assign, or cause or permit the pledge or assignment of, any ownership interest in Seller if such pledge or assignment would have a material adverse effect on the Project or on Seller’s ability to perform its obligations under this Agreement. Seller shall provide SCE with written Notice of any direct or indirect pledge or assignment of any ownership interest in Seller at least ten (10) Business Days prior to such pledge or assignment.

# ARTICLE TWENTY-FIVE

# LIMITATIONS

1. Limitation of Remedies, Liability and Damages.

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

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

SUBJECT TO SECTION 27.04, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

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

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

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

1. No Representation by SCE.

Any review by SCE of the Project, including the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for SCE’s information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project, and Seller shall in no way represent to any third party that any such review by SCE of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by SCE, constitutes any such representation by SCE. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

# ARTICLE TWENTY-SIX

# RECORDS

1. Performance under this Agreement.

Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than four (4) years after final payment is made under this Agreement.

1. Other Regulatory and Governmental Requirements.

At SCE’s request, Seller shall maintain and deliver to SCE copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

1. Audit Rights.

SCE shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Seller to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Seller shall have the right, at its sole expense, to hire an independent third party reasonably acceptable to SCE to audit the documents, records or data of SCE related to this Agreement during normal working hours to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Such independent third party must sign a confidentiality agreement in substance reasonably acceptable to SCE before examining SCE’s documents, records or data. Each Party shall promptly comply with any reasonable request by the other Party under this Section 26.03 and provide copies of documents, records or data to the requesting Party. The rights and obligations under this Section 26.03 shall survive the termination of this Agreement for a period of two (2) years.

1. California Climate Action Registry.

If applicable, in accordance with CPUC Rulemaking 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow generation facility-specific registration, Seller shall promptly (i) register with the California Climate Action Registry, (ii) send SCE Notice of such registration and (iii) remain a member of the California Climate Action Registry throughout the entire Term.

# ARTICLE TWENTY-SEVEN

# DISPUTES

1. Dispute Resolution.

Other than requests for provisional relief under Section 27.04, any and all Disputes which the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, must first be submitted to mediation under the procedures described in Section 27.02 below, and if the matter is not resolved through mediation, *then* for final and binding arbitration under the procedures described in Section 27.03 below.

The Parties waive any right to a jury and agree that there will be no interlocutory appellate relief (such as writs) available. Any Dispute resolution process pursuant to this Article Twenty-Seven shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the Dispute, without regard to the date such facts are discovered; *provided*, if the facts giving rise to the Dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered. If the Dispute resolution process pursuant to Article Twenty-Seven with respect to a Dispute is not commenced within such one (1) year time period, such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

1. Mediation.

Either Party may initiate mediation by providing Notice to the other Party in accordance with Section 30.02 of a written request for mediation, setting forth a description of the Dispute and the relief requested.

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

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

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

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

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator’s agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided,* evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

1. Arbitration.

Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by providing Notice in accordance with Section 30.02 of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 27.02, above. If Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 27.02 above, the Dispute resolution process shall be deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

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

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

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

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

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

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

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

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

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

1. 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);
2. The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
3. Discovery may commence at any time after the Parties’ initial disclosure;
4. The Parties will not be permitted to propound any interrogatories or requests for admissions;
5. Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
6. Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
7. 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;
8. Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
9. Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
10. Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Section 25.01, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 1.01, 3.06, 12.01, 12.03, 19.05, 24.02(a), and 24.03(k) and Article Twenty-Nine of this Agreement.

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

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

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

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator’s decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator’s decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter’s fees.

1. Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Section 1.01, 3.06, 12.01, 12.03, 19.05, 24.02(a), or 24.03(k) or Article Twenty-Nine 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 this Article Twenty-Seven. The Parties further acknowledge and agree that the results of the arbitration may be rendered ineffectual without the provisional relief.

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

1. Waiver of Jury Trial.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT.

1. Consolidation of Matters.

The Parties shall make diligent good faith efforts to consolidate any provisional relief, mediation, arbitration or other dispute resolution proceedings arising pursuant to this Article Twenty-Seven that arise from or relate to the same act, omission or issue.

# ARTICLE TWENTY-EIGHT

# INDEMNIFICATION

1. SCE’s Indemnification Obligations.

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.01, SCE releases, and shall indemnify, defend and hold harmless Seller, and Seller’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third-party), arising out of or in connection with any breach made by SCE of its representations and warranties in Section 24.01.

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

1. Seller’s Indemnification Obligations.

In addition to any other indemnification obligations Seller may have elsewhere in this Agreement, which are hereby incorporated in this Section 28.02, Seller releases, and shall indemnify, defend and hold harmless SCE, and SCE’s directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct, damage, claim, cost, charge, demand, or expense, and attorneys’ fees (including cost of in-house counsel) and other costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third-party), arising out of or in connection with:

1. any breach made by Seller of its representations and warranties in Sections 24.01 and 24.02;
2. Seller’s failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 1.01(a) and 19.05 and Article Twelve;
3. Penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category against SCE, except to the extent solely due to SCE’s negligence in performing its role as Seller’s Scheduling Coordinator during any Put Delivery Period;
4. injury or death to persons, including SCE employees, and physical damage to property, including SCE property, where the damage arises out of, is related to, or is in connection with, Seller’s construction, ownership or operation of the Project, or obligations or performance under this Agreement;
5. 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 30.15; *provided*, the inclusion of this subsection (e) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 30.15; or
6. any breach by Seller of the covenants set forth in Sections 24.03 and 24.04.

This indemnity applies notwithstanding SCE’s active or passive negligence. However, SCE will not be indemnified under Section 28.02(a) - (d) for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

1. Indemnification Claims.

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

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

All indemnity rights shall survive the termination of this Agreement.

1. Resource Adequacy.

Seller agrees to indemnify SCE for any monetary penalties or fines assessed against SCE by the CPUC or the CAISO or any other entity having jurisdiction, resulting from Seller's willful or negligent failure to provide SCE with the full Contract Capacity for the Project for purposes of meeting SCE's RA Compliance Obligations. The Parties shall use commercially reasonable efforts to minimize such fines and penalties; *provided*, in no event will SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize the fines and penalties.

# ARTICLE TWENTY-NINE

# CONFIDENTIALITY/REGULATORY DISCLOSURE

1. Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 29.02 and 29.03, each receiving Party shall, and shall cause its Representatives to, (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; *provided,* a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party’s obligations under this Agreement if, but only if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are directed to comply with the requirements of this Agreement and, in the case of Representatives of Seller engaged wholly or in part in the purchase and sale of electrical power or natural gas, only if such Representatives are *directly* engaged in performing Seller’s obligations under this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

1. Permitted Disclosures.
2. SCE may disclose Confidential Information to the Independent Evaluator. SCE and the Independent Evaluator may disclose Confidential Information to duly authorized regulatory and governmental agencies or entities, including the FERC, CPUC and all divisions thereof, and the CAISO, SCE’s Procurement Review Group (the “PRG”), a group of non-market participants including members of the CPUC, other governmental agencies and consumer groups established by the CPUC in Decision 02-08-071, and CAM. Neither SCE nor the Independent Evaluator shall have any liability whatsoever to Seller in the event of any unauthorized use or disclosure by a regulatory or governmental agency or entity including without limitation the FERC, the CPUC and all divisions thereof, the PRG, CAM or the CAISO of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.
3. SCE and the Independent Evaluator may also disclose Confidential Information to any Governmental Authority or to any third party to the extent necessary to comply with any Applicable Laws, and any applicable regulation, decision, rule, subpoena or order of the CPUC, CEC, FERC, any administrative agency, legislative body or other tribunal (other than those entities set forth in Section 29.02(c)), any exchange, Control Area or CAISO rule, or any discovery or data request of a party to any proceeding pending before any of the foregoing.
4. The Parties may disclose Confidential Information to the extent necessary to comply with any subpoena or order of court or judicial entity having jurisdiction over the disclosing Party (other than those entities set forth in Section 29.02(b)), or in connection with a discovery or data request of a party to any proceeding before any of the foregoing.
5. Buyer may disclose the Product or any applicable portion of the Product, including any amounts of Flexible Capacity and Inflexible Capacity, under this Agreement to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Product and the applicable Expected Contract Quantity and any amounts of Flexible Capacity and Inflexible Capacity for each day of each Showing Month during any RA Delivery Period under this Agreement to the SC of each Generating Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product to another party or the Product is to be provided to another party in accordance with Section 1.01(f), Buyer shall be permitted to disclose to the other party to such transaction all such information necessary to effect such transaction.
6. Duty to Seek Protection.
7. In connection with requests or orders to produce Confidential Information protected by this Agreement in the circumstances provided in Section 29.02(c) (by deposition, interrogatories, requests for information or documents, subpoena, order or similar legal process) each Party (i) will promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Agreement, and (ii) will, and will cause its Representatives to, cooperate fully with such other Party in seeking to limit or prevent such disclosure of such Confidential Information.
8. If a Party or its Representatives are, in the written opinion of its legal counsel, and notwithstanding compliance with Section 29.03(a) compelled to make disclosure in response to a requirement described in Section 29.03(a) or stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which it is legally required to disclose and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.
9. Ownership and Return of Information.

All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Article Twenty-Nine.

# ARTICLE THIRTY

# MISCELLANEOUS

1. General.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. 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. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if one Party seeks to amend any applicable wholesale power sales tariff during the term of this Agreement without the prior written consent of the other Party, such amendment will not in any way affect either Party’s obligations under the Agreement. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

1. Notices.

Unless otherwise provided in this Agreement, any notice or request (“Notice”) shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after the postmarked date. Notice by United States mail shall be effective on the third (3rd) Business Day after it was sent. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 30.02.

If to SCE: Southern California Edison Company

2244 Walnut Grove Avenue

Rosemead, California 91770

Attn: Vice President, Energy Contracts

Facsimile No.: (626) 302-8168

Copy: Southern California Edison Company

2244 Walnut Grove Avenue

Rosemead, California 91770

Attn: Section Director, Power Procurement

Facsimile No.: (626) 302-4106

If to Seller: *[Seller]*

Address

Address Line 2

City, State Zip

Attn:

Facsimile No.:

Copy: *[Seller]*

Address Line 1

Address Line 2

City, State Zip

Attn:

Facsimile No.:

1. Governing Law; Venue.

This Agreement shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the City of Los Angeles, California.

1. Amendment.

This Agreement can only be amended by a writing signed by both Parties.

1. Assignment.

Neither Party shall assign, transfer, delegate, mortgage, hypothecate, pledge or encumber its rights, title or interest in this Agreement without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; *provided,* Seller may collaterally assign this Agreement in accordance with Article Fourteen. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent may be withheld in the exercise of its sole discretion.

1. Waiver.

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

1. Obligations Surviving Termination.

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, remedies, limitation of liabilities, posting of Performance Assurance and Delivery Date Security, dispute resolution, and limitations on third party sales, shall so survive.

1. Further Assurances.

If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary to carry out the terms of this Agreement.

1. No Agency.

Except as otherwise provided explicitly herein, inperforming their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party’s agent.

1. No Third Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement or any third party which acquires rights under this Agreement).

1. Independent Contractors.

The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties or to impose any partnership obligation or liability on either Party in anyway.

1. Severability.

If any term, Section, provision or other part of this Agreement, or the application of any term, Section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, Sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

1. Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that they are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.

1. Mobile Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or 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 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish,* 554 U.S. 527 (2008).

Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

1. Insurance.
2. Seller shall, at its own expense, provide and maintain in effect insurance policies with limits of coverage in amounts not less than as specified below, and such additional coverage as may be required by Applicable Law, throughout the Term of this Agreement and as required otherwise below (“Seller’s Insurance”):
   1. Workers’ Compensation Insurance, in statutory limits, as required by the state in which the Project is located, and Employers' Liability Insurance in limits not less than the following:
3. $1,000,000 each accident;
4. $1,000,000 disease, each employee; and
5. $1,000,000 disease, policy limit.
   1. Commercial General Liability Insurance, written on an “occurrence,” not “claims-made” basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in limits not less than *[TBD (or) $1,000,000,* *per occurrence* *and $2,000,000 annual aggregate**]*, exclusive of defense costs. Such insurance shall contain (A) standard cross-liability or severability of interest provision; and (B) no explosion, collapse, or underground exclusions.

If Seller elects, with the approval of SCE, which approval shall not be unreasonably withheld, to use a “claims-made” form, then the following additional requirements shall apply: (x) the retroactive date of the policy must be prior to the Effective Date of this Agreement; and (y) either (1) coverage shall be maintained in effect for a period of not less than three (3) years after end of the Term or the Early Termination Date, if any, or (2) an extended reporting period of not less than three (3) years after end of the Term or the Early Termination Date, if any.

* 1. Commercial Automobile Liability Insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of the use of all owned, non-owned and hired automobiles by Seller in the performance of this Agreement.
  2. Pollution Liability Insurance, with limits of not less than *[TBD (or) $5,000,000, per occurrence or each claim and in the annual aggregate]*, covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from the operations of the Seller, including but not limited to, coverage for the following: (A) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (B) property damage including the resulting loss of use thereof; clean-up costs; and the loss of use of tangible property that has not been physically damaged or destroyed; and (C) defense costs.

If maintained on an occurrence basis, Seller shall continue to maintain such coverage for a period of not less than one (1) year following end of the Term or the Early Termination Date, if any. If written on a claims-made basis, (x) the retroactive date of the policy must be prior to the Effective Date of this Agreement, and (y) either (1) Seller shall continue to maintain such coverage for a period of not less than three (3) years after the end of the Term or the Early Termination Date, if any, or (2) an extended reporting period of not less than three (3) years after end of the Term or the Early Termination Date, if any.

* 1. Umbrella Liability/Excess Liability Insurance, written on an “occurrence,” not “claims-made,” following-form basis, providing coverage excess of the underlying Employers’ Liability, Commercial General Liability, Commercial Automobile Liability, and Pollution Liability insurance, on terms at least as broad as the underlying coverage, in limits not less than *[TBD (or ) $10,000,000, per occurrence and in the annual aggregate]*. The insurance requirements of this Section 30.15 can be provided by any combination of Seller’s primary and excess liability policies.

If Seller elects, with the approval of SCE, which approval shall not be unreasonably withheld, to use a “claims-made” form, then the following additional requirements shall apply: (A) the retroactive date of the policy must be prior to the Effective Date of this Agreement; and (B) either (1) coverage shall be maintained in effect for a period of not less than three (3) years after end of the Term or the Early Termination Date, if any, or (2) an extended reporting period of not less than three (3) years after end of the Term or the Early Termination Date, if any.

1. Seller’s Insurance shall be maintained with insurers authorized to do business in the state in which the Project is located and bearing an A.M. Best Company rating of A-:VII or better (or equivalent S&P rating), and on forms and with deductibles reasonably acceptable to SCE.
2. Seller’s Insurance above shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to SCE its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller’s policies to the contrary.
3. To the extent permitted by Applicable Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers.
4. The Seller’s Commercial General Liability, Pollution Liability and Umbrella Liability/Excess Liability insurance required above shall name SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds with respect to all third-party liabilities arising out of Seller’s construction, use, ownership or operation the Project.
5. On or prior to the Effective Date of this Agreement, or prior to any construction or civil works as is appropriate, Seller shall provide to SCE certificates of insurance on forms reasonably acceptable to SCE. Seller’s Insurance shall not be terminated, expire, or be materially altered except upon thirty (30) days prior notice to SCE.
6. If any of Seller’s Insurance policies contain aggregate limits applying to other projects or operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against Seller’s Insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.
7. If Seller fails to comply with any of the provisions of this Section 30.15, Seller, among other things and without restricting SCE’s remedies under the Applicable Law or otherwise, shall at its own cost and expense, defend, indemnify and hold harmless SCE. With respect to the required Commercial General Liability, Commercial Automobile Liability, Pollution Liability and Umbrella Liability/Excess Liability insurance, Seller shall also act as an insurer and provide insurance in accordance with the terms and conditions above, and provide a current, full and complete defense to SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest in response to any third party liability claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
8. Seller’s compliance with this Section 30.15 shall not limit, reduce, cancel or otherwise impair Seller's liability under the provisions of Article Twenty-Eight.
9. NERC Standards Compliance Penalties.

During the Delivery Period, Seller shall be (i) responsible for complying with any NERC Reliability Standards applicable to the Project, including registration with NERC as the Generator Operator for the Project or other applicable category under the NERC Reliability Standards and implementation of all applicable processes and procedures required by FERC, NERC, WECC, CAISO or other Governmental Authority for compliance with the NERC Reliability Standards; and (ii) liable for all penalties assessed by FERC, NERC (through WECC or otherwise) or other Governmental Authority for violations of the NERC Reliability Standards by the Project or Seller, as Generator Operator or other applicable category. However, if Seller learns that FERC, NERC (through WECC or otherwise) or other Governmental Authority is considering or intends to assess Seller with a penalty that Seller believes is attributable to SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the potential assessment, Seller shall provide SCE with sufficient notice to allow SCE to take part in administrative processes, discussions or settlement negotiations with FERC, NERC, WECC, or other Governmental Authority arising from or related to the alleged violation or possible penalty. If the penalty is nonetheless assessed in spite of SCE’s participation in the processes, discussions or settlement negotiations, or SCE waives its right to take part in the processes, discussion or settlement negotiations with FERC, NERC, WECC, or other Governmental Authority, SCE shall reimburse Seller for the penalty to the extent that (a) it was solely caused by SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the violation; and (b) Seller can establish to SCE’s reasonable satisfaction that the penalty was actually assessed against Seller by FERC, NERC (through WECC or otherwise) or other Governmental Authority and paid by Seller to the applicable entity. If SCE took part in and agreed to the terms of settlement, SCE shall also reimburse Seller for any payment made by Seller in settlement of a claim of violation by or on behalf of FERC, NERC (through WECC or otherwise) or other Governmental Authority, to the extent that (x) the claim being settled was solely caused by SCE’s actions or inactions as SC as described in the document entitled “NERC Reliability Standards - Responsibilities of the Generator Operator, Scheduling Coordinator, CAISO, and Reliability Coordinator” or other successor description or document on the CAISO website at the time of the claim; and (y) Seller can establish to SCE’s reasonable satisfaction that Seller actually made the payment to the applicable entity under the settlement.

1. Multiple Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties 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. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

1. Entire Agreement.

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

|  |  |  |
| --- | --- | --- |
| ***[SELLER’S NAME]*,**  *a [Seller’s jurisdiction of organization and type of organization]*. |  | **SOUTHERN CALIFORNIA EDISON COMPANY,**  a California corporation. |
| By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *[Name]*  *[Title]* |  | *By:*  *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*  *[Name]*  *[Title]* |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

APPENDIX A

DEFINITIONS

“AB 32” means the California Global Warming Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder (including, without limitation, the GHG Regulations) by any authorized Governmental Authority.

“AB 32 Compliance Obligation” has the meaning set forth for “Compliance Obligation” in the GHG Regulations as it relates to Seller.

“AB 32 Quarterly Settlement Date” is the date that follows the most recent Auction that SCE shall pay any accrued AB 32 Reimbursement Obligations for the completed portion of a Put Delivery Period, which will be calculated and included as part of the upcoming regular monthly invoice along with all other payments due from SCE to Seller, in accordance with Article Eleven.

“AB 32 Reimbursement Obligation” means the portion of Seller’s AB 32 Compliance Obligation for a Put Delivery Period in metric tons that is subject to reimbursement by SCE per the calculation set forth in Section 15.03(c).

“Aborted Start-Up Fuel” or “ASUF” has the meaning set forth in Section 16.01(c).

“Accepted 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 Project, 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 or that should reasonably have been 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.

Accepted 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.

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

1. Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project’s needs;
2. Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project and emergencies whether caused by events on or off the Site;
3. Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
4. Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
5. 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 PTO’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 loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
6. Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“ADS” has the meaning set forth in the Tariff.

“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.

“Aggregate Network Upgrade Costs” has the meaning set forth in Section 4.02(a).

“Agreement” has the meaning set forth in the preamble.

“Air Pollution Control District” means a district as defined by Section 39025 of the California Health and Safety Code, Division 26, Air Resources.

“Ambient Generating Unit Output Table” has the meaning set forth in Appendix 7, PART III.G.

“Ancillary Service Regional Limits” has the meaning set forth in the Tariff.

“Ancillary Services” or “A/S” means Spinning Reserve, Non-Spinning Reserve, replacement reserves, Regulation Up or Regulation Down or any other ancillary service defined in the Tariff.

“Ancillary Services Capacity” or “A/S Capacity” means Capacity associated with Spinning Reserve, Non-Spinning Reserve, Regulation Up or Regulation Down, as well as any other interconnected operation services as the CAISO develops as or deems to be ancillary services, available from any Generating Unit during a Put Delivery Period.

“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 Project or the terms of this Agreement, including, without limitation, the Tariff.

“Approval Date” has the meaning set forth in Section 2.02.

“Approved Repair Plan” has the mean set forth in Appendix 7, Part II.K.

“Arbitrator” has the meaning set forth in Section 27.03.

“ASHRAE” means the American Society of Heating, Refrigeration and Air-Conditioning Engineers.

“A/S Availability” means the amount of Ancillary Services Capacity available to SCE under this Agreement from a Generating Unit during any Settlement Interval during a Put Delivery Period.

“A/S Capacity Payment Reduction” has the meaning set forth in Section 10.01(d)(iii).

“A/S Maximum Capacity” is as set forth in Appendix 1.02 for each applicable Ancillary Service, the maximum capacity for a particular region in which such Ancillary Service is available.

“A/S Minimum Capacity” is as set forth in Appendix 1.02 for each applicable Ancillary Service.

“A/S Price Adjustment Factor” has the meaning set forth in Section 10.01(d)(ii).

“Associated Ancillary Services Energy” means the Energy expressed in MWh expressly associated with the Ancillary Service Capacity made available from any Generating Unit at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in MWh or kWh dispatched under this Agreement.

“Auction” is each auction for CCAs conducted in accordance with Subarticle 10 of the GHG Regulations, except for the first auction identified in Section 95910(a)(1) of the GHG Regulations.

“Auction Settlement Price” has the meaning set forth in the GHG Regulations.

“Automatic Generation Control” or “AGC” means the remote signal control of a Generating Unit’s output.

“Availability Incentive Payments” has the meaning set forth in the Tariff.

“Availability Notice” has the meaning set forth in Section 20.01.

“Availability Standards” has the meaning set forth in the Tariff.

“Available Capacity” means the amount of Capacity that is available to SCE under this Agreement from a Generating Unit during any Settlement Interval during a Put Delivery Period. If a Generating Unit’s Available Capacity during any Settlement Interval is below PMIN, then the Available Capacity for such Generating Unit shall be deemed zero (0) for such Settlement Interval.

“Bankrupt” means with respect to any entity, such entity (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bid” has the meaning set forth in the Tariff.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the U.S. Thanksgiving holiday, or a Federal Reserve Bank holiday.

“Buyer” has the meaning set forth in the preamble.

“Buyer Dispatched Test” has the meaning set forth in Section 7.03(b).

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all participating transmission owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Certification” means the certification and testing requirements for a generating unit set forth in the Tariff, including certification and testing for all Ancillary Services (included in this Agreement) and PMAX and PMIN.

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

“CAISO Markets” has the meaning set forth in the Tariff.

“CARB” means the California Air Resources Board, or any successor entity that has authority over the GHG Regulations or AB 32.

“California Carbon Allowance” or “CCA” means physically delivered California Greenhouse Gas emissions allowances where each is an allowance issued by the CARB representing one (1) metric ton of carbon dioxide equivalent under AB 32 “California Global Warming Solutions Act of 2009” and its associated regulations, rules, and amendments, all together known as the “California Cap and Trade Program.”

“California Climate Action Registry” or “CCAR” means the registry contemplated in CPUC Rulemaking 06-04-009 (April 13, 2006).

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, *et seq*).

“Capacity” means the maximum dependable operating capability of any generating resource to produce or generate Energy, and shall include, without limitation, Ancillary Services Capacity, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of a generating resource to produce or generate Energy.

“Capacity Availability” means, for each Settlement Interval during a Put Delivery Period (i) a Generating Unit’s Available Capacity, if the Generating Unit operates within the Performance Tolerance Band, or (ii) a Generating Unit’s Available Capacity, less the product of (x) the difference between (a) Scheduled Energy and (b) Qualifying Delivered Energy, and (y) the number of Settlement Intervals in one hour, if such Generating Unit operates below the Performance Tolerance Band Lower Limit; *provided*, if Scheduled Energy exceeds Contract Capacity Energy in a Settlement Interval, then, for the purpose of calculating Capacity Availability under this definition (including the determination of the Performance Tolerance Band), Scheduled Energy shall be deemed to equal Contract Capacity Energy for that Settlement Interval. In no event shall the Capacity Availability be less than zero (0) MW or greater than GU Contract Capacity.

“Capacity Payment Reduction” has the meaning set forth in Section 10.01(c)(iv).

“Capacity Price Adjustment Factor” has the meaning set forth in Section 10.01(c)(iii).

“Capacity Procurement Mechanism” has the meaning set forth in the Tariff.

“Catastrophic Equipment Failure” means a specifically identified, unexpected failure of a major piece of equipment in a Generating Unit that is beyond the control of, and not the result of the negligence of, or caused by, Seller, due to the design or manufacture (but not the operation or installation) of such piece of equipment.

“Change in AB 32” means a change in AB 32 after the Effective Date, which change has a material impact on either Party with respect to the AB 32 Compliance Obligation or the AB 32 Reimbursement Obligation under Article Fifteen with respect to the electric energy produced, sold or purchased pursuant to this Agreement. A Change in AB 32 may include, for example, a change in exemptions or the calculation of compliance obligations, but will not include an increase or decrease in the cost of CCAs or Offset Credits.

“Claiming Party” means the Party claiming a Force Majeure under Article Twenty-Three.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.01.

“Commercial Operation” means that a Generating Unit has successfully completed the demonstration set forth in Appendix 7 as demonstrated by SCE’s acceptance of the Test results.

“Compliance Period” has the meaning set forth in the GHG Regulations.

“Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load-serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the Tariff, or to any Governmental Authority having jurisdiction.

“Confidential Information” means any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, including Dispatch Data, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, and the terms and conditions and other facts with respect to this Agreement. Confidential Information does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives; *provided*, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate that the information has been independently developed without a violation of this Agreement.

“Congestion Revenue Right” has the meaning set forth in the Tariff.

“Construction Report” has the meaning set forth in Section 6.01.

“Contract Capacity” means the aggregate Capacity of each Generating Unit as set forth in Appendix 1.02. As of the Effective Date, the Contract Capacity shall equal the aggregate of the Expected Contract Capacity of each Generating Unit as set forth in Appendix 1.02. Pursuant to Article 7 and Appendix 7, Contract Capacity shall be adjusted upon SCE’s acceptance of the Initial Commercial Operation Test, in accordance with Part II.L. of Appendix 7. Appendix 1.02 shall be automatically amended to reflect the updated Contract Capacity achieved by the Generating Unit(s) pursuant to such Test; *provided*, that in no event may the Contract Capacity, as determined pursuant to Article Seven, exceed the aggregate Expected Contract Capacity of the Generating Unit(s).

“Contract Capacity Energy” means the amount of Energy capable of being produced by a Generating Unit based on its GU Contract Capacity.

“Contract Capacity & Ancillary Services Tests” or “CCAST” means the testing procedures, requirements, and protocols set forth in Appendix 7.

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. The second Contract Year would be from January 1st through December 31st of the year immediately following the initial Contract Year. The final Contract Year will be January 1st of the last year during which the Delivery Period occurs, through the last day of the Delivery Period.

“Contracted Marketer” or “CM” has the meaning set forth in Rule 1 and Rule 35 of the SoCalGas Tariff.

“Contracted Marketer Agreement” means the Master Service Contract Schedule B, Marketer/Core Aggregator/Use or Pay Aggregator Agreement.

“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.

“Cost Allocation Mechanism Group” or “CAM” means the advisory group established by the CPUC in Decision 07-12-052.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product. With respect to SCE, Costs shall be based on replacing the Product with product from new gas-fired generation capacity which has not yet been constructed and which would be considered a *[Western LA Basin Project or Moorpark Sub-Area Project]*.

“CPM Capacity” has the meaning set forth in the Tariff.

“CPUC” means the California Public Utilities Commission or any successor thereto.

“CPUC Filing Guide” is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load-serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“Daily Delay Damages” means liquidated damages in the amount of (i) the product of $323.00/MW and the Expected Contract Capacity of all of the Generating Unit(s) for each day of delay during the period of June 1 through September 30, inclusive, or (ii) the product of $208.00/MW and the Expected Contract Capacity of all of the Generating Unit(s) for each day of delay during all other days of the year.

“Daily Deviation Quantity” has the meaning set forth in Section 16.08(c).

“Daily Gas Burn” means the actual gas burn for the applicable calendar day for the Generating Unit(s), as measured by the SoCalGas Billing Meter for the Generating Unit(s), reported on Envoy.

“Data Acquisition System” or “DAS” has the meaning specified in Appendix 7, PART III.B.

“Day-Ahead” has the meaning set forth in the Tariff.

“Day-Ahead Market” has the meaning set forth in the Tariff.

“Day-Ahead Schedule” has the meaning set forth in the Tariff.

“Defaulting Party” has the meaning set forth in Sections 3.01 and 3.02.

“Delivered Energy” means, in respect of a Generating Unit during a Put Delivery Period, the amount of Energy generated by such Generating Unit and delivered during each Settlement Interval at the Energy Delivery Point as measured by the Energy Metering Equipment, and subject to adjustments identified in this Agreement. The Delivered Energy in any hour is equal to the sum of the Delivered Energy for each Settlement Interval during such hour.

“Delivered Gas Cost” has the meaning set forth in Section 16.08(c)(ii).

“Delivery Date Security” has the meaning set forth in Section 13.02(a).

“Delivery Period” has the meaning set forth in Section 2.04.

“Deviations” has the meaning set forth in Section 16.08(c).

“Dispatch Data” means data, information or other material in any way related to any schedule, dispatch or instruction of a Generating Unit, including any schedules, dispatches, Dispatch Notices, settlement statements, Ancillary Services dispatches or awards, if applicable.

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by SCE to Seller, directing the applicable Generating Unit to operate at a specified megawatt output or a dispatch given by the CAISO. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via facsimile, telephonically or other verbal means. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both SCE and Seller upon request for settlement purposes. For the avoidance of doubt, any Schedule, including self-schedules, submitted by SCE or awarded by the CAISO in order to effectuate a Seller Initiated Test shall not be considered a Dispatch Notice for the period that is the greater of (i) the number of hours required to complete the test, or (ii) the Generating Unit(s)’ Minimum Run Time.

“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.

“Disqualified Stock” means any capital stock that, by its terms (or by the term of any security instrument into which it is convertible, or for which it 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 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 last day of the Term.

“Distributed Control System” or “DCS” means the integrated automation system for monitoring and controlling the critical operation functions of a facility that perform tasks essential to the generation of electricity.

“Early Termination Date” has the meaning set forth in Section 3.03.

“Effective Date” has the meaning set forth in the preamble.

“Emission Reduction Credits” or “ERC” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Energy” means all electrical energy produced, flowing or supplied by a Generating Unit or the Project, as applicable, less the Station Use, measured in kilowatt-hours or multiples units thereof. Energy shall include without limitation, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” has the meaning set forth in Section 1.03(a).

“Energy Metering Equipment” means, for each Generating Unit, the meters and measuring equipment recognized by the CAISO for measuring Energy produced by the Generating Unit.

“Energy Put Option” has the meaning set forth in Section 1.01.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

“Envoy” means SoCalGas’ internet based electronic bulletin board that monitors electronic gas transactions and serves as SoCalGas’ information management computer system.

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

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Project.

“Equitable Defenses” 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.

“Event of Default” has the meaning set forth in Sections 3.01 and 3.02.

“Excess Network Upgrade Costs” has the meaning set forth in Section 4.02.

“Exchange” means, the exchange or principal trading market used to determine Gas Index between the Parties in this Agreement.

“Existing Zone” has the meaning set forth in the Tariff.

“Existing Zone Generation Trading Hub” has the meaning set forth in the Tariff.

“Expected Contract Capacity” means the expected electrical output of each Generating Unit as measured in MW at the Energy Delivery Point of the Project available for daily planning and operation purposes during the summer conditions at the Site based on historical weather data for the last 30 years, and as set forth in Appendix 1.02.

“Expected Contract Quantity” means, with respect to any particular day of any Showing Month of a RA Delivery Period, the Product (in MWs) for such day of such Showing Month, less any reductions to the amount of Product (in MWs) that must be provided for such day as specified in Section 12.02.

“Expected Flexible Capacity” means the expected Unit EFC for any particular Generating Unit as set forth for such Generating Unit in Appendix 1.03.

“Expected Initial Delivery Date”is the date set forth in Section 2.03.

“Federal Funds Effective Rate” means the rate for that day 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.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“Final CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Seller under the Agreement; (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion; and finds that any procurement pursuant to this Agreement satisfies the requirement to procure resources under CPUC Decision 13-02-015. ***[SCE INTERNAL DRAFTING NOTE. DO NOT INCLUDE IN THE TURN OF THE PPA: Please note that SCE must have sole discretion in determining whether Final CPUC Approval has occurred. Given the complications around the new put option and cost allocation we need to make sure that SCE has the right to terminate in the event the CPUC does not provide the proper cost allocation treatment of this contract.]***

“Final Test Plan” has the meaning set forth in Appendix 7, PART III.A.

“Financial Consolidation Requirement” has the meaning set forth in Section 13.06(a).

“Firm Priority Service” means firm priority CA service, firm priority RS service and/or firm priority NV service as set forth in Schedule A of Seller’s Gas Transportation Contract under Schedule GT-TLS.

“Fitch” means Fitch Ratings Ltd. or its successor.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“Force Majeure” means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as droughts, floods, earthquakes, (b) adverse geological or underground conditions that could not have been discovered through a reasonably prudent geophysical site survey, (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, and embargoes, and (d) industry-wide or general (i.e. not directed specifically at or by the party claiming Force Majeure) strikes, lockouts or other labor disputes. Force Majeure shall not include (i) a failure of performance of any other entity, including any entity providing electric transmission service or natural gas transportation to the Project, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event, (ii) failure to timely apply for or obtain permits including required Marketable Emission Trading Credits, or (iii) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure).

“Forced Outage” has the meaning set forth in the Tariff.

“Forward Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other.

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

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

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

“Fuel Manager” has the meaning set forth in Section 16.01(a).

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, as described below. With respect to SCE, Gains shall be based on replacing the Product with product from new gas-fired generation capacity which has not yet been constructed and which would be considered a *[Western LA Basin Project or Moorpark Sub-Area Project]*. For purposes of determining Gains, Seller shall be deemed to have exercised its Energy Put Option for each and every remaining Contract Year of the Term.

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

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

“Gas Costs” means the (a) commodity cost of the natural gas, (b) transportation service to the SoCalGas Billing Meter, as determined in Section 16.08(b), including any charges assessed for surcharges, fuel retention charges, imbalances, penalties, or balancing or storage costs, and (c) fuel use taxes, if applicable.

“Gas Delivery Charge” has the meaning set forth in Section 16.08(b).

“Gas Delivery Point” has the meaning set forth in Section 1.03(b).

“Gas Index” means the index price expressed in $/MMBTU for the applicable flow date published by Platt’s *Gas Daily* in the table titled “Daily price survey ($MMBtu)” for “SoCalGas, city-gate” under the subheading “Citygates”, in the column labeled “Midpoint”.

“Gas Transportation Contract” means the Master Services Contract Schedule A, Intrastate Transmission Service between Seller and SoCalGas which such contract will be used to transport natural gas to the Project under the SoCalGas Schedule No. GT-F or SoCalGas Schedule No. GT-TLS for firm priority service.

“Generating Facility” has the meaning set forth in the Tariff.

“Generating Unit” or “Generating Units” means the generating unit or units specified in Appendix 1.03.

“Generating Unit Removal Right” means, with respect to any Generating Unit that is subject to 8.02(d)(i) or 8.02(e)(i), SCE’s right to designate such affected Generating Unit(s) for removal from this Agreement. Upon Notice of such designation: (i) SCE shall have no obligation to compensate Seller for Product from such Generating Unit(s), (ii) Contract Capacity and Appendices 1.02, 1.03, 9.02, and any other information specific to such Generating Unit(s), shall automatically be amended to reflect the removal of such Generating Unit(s), (iii) Seller shall not be permitted to market, dispatch, provide, or convey Energy, Capacity, Ancillary Services, Ancillary Service Capacity or Resource Adequacy Benefits from such Generating Unit(s) for SCE or any other third party, (iv) SCE shall calculate, and Seller shall be obligated to pay, a Termination Payment attributable to and associated with the Product from such Generating Unit(s) with SCE being considered the Non-Defaulting Party in all circumstances, and (v) notwithstanding clause (iv), this Agreement will otherwise remain in full force and effect.

“Generation Management System” or “GMS” means the automated system employed by SCE real time operations to remotely monitor, dispatch, and control each Generating Unit.

“Generation Operations Center” or “GOC” means the location of SCE’s real time operations personnel.

“Generator Operator” means the entity that operates generating unit(s) and performs the functions of supplying energy and interconnected operations services and the other functions of a generator operator as described in NERC’s Statement of Compliance Registry Criteria located on the NERC website.

“Generator Owner” means an entity that owns the Project and has registered with NERC as the entity responsible for complying with those NERC Reliability Standards applicable to owners of generating units as set forth in the NERC Reliability Standards.

“GHG Cap” is the GHG Rate times the Required Natural Gas Quantity associated with a Dispatch Notice.

“GHG Charge” means any taxes, charges or fees imposed on the Project or Seller by a Governmental Authority for Greenhouse Gas emitted by and attributable to the Project during the Delivery Period, but excluding the AB 32 Compliance Obligation.

“GHG Credits” has the meaning set forth in Section 15.03(b)(ii).

“GHG Rate” is 117 lbs. of Greenhouse Gas emissions /MMBtu.   
*[SCE note: rate derived through information provided in the Energy Information Administration’s Documentation for Emissions of Greenhouse Gases in the United States 2005 (DOE/EIA-0638)* [*http://www.eia.doe.gov/oiaf/1605/ggrpt/documentation/pdf/0638(2005).pdf*](http://www.eia.doe.gov/oiaf/1605/ggrpt/documentation/pdf/0638(2005).pdf) *and the Environmental Protection Agency’s Emission Factors, AP 42, Fifth Edition, Volume I* [*http://www.epa.gov/ttn/chief/ap42/index.html*](http://www.epa.gov/ttn/chief/ap42/index.html)*.]*

“GHG Regulations” means Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations, as amended or supplemented from time to time.

“Governmental Authority” means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity, and the CAISO or any other transmission authority, exchange or grid control operator having or asserting jurisdiction over a Party, any Generating Unit, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 15.07.

“Greenhouse Gas” or “GHG” has the meaning set forth in the GHG Regulations.

“Grid Control Center” means the location of the personnel responsible for operating the applicable transmission grid and/or coordinating same with the CAISO.

“GU Contract Capacity” means the Capacity of a single Generating Unit as set forth in Appendix 1.02.

“GU Flexible Capacity” means the Unit EFC of a single Generating Unit as set forth in Appendix 1.03.

“HASP” has the meaning set forth in the Tariff, or any other successor process that replaces HASP.

“Heat Rate” means the amount of natural gas in MMBtu required to produce one MWh of Energy from a Generating Unit as set forth in Appendix 16.08.

“Heat Rate Adjustment Payment” or “HRAP” has the meaning set forth in Section 16.08(c).

“IFM” has the meaning set forth in the Tariff.

“IFRS” has the meaning set forth in Section 13.01.

“Imbalance Energy” has the meaning set forth in the Tariff.

“Indemnified Party” has the meaning set forth in Section 28.03.

“Indemnitor” has the meaning set forth in Section 28.03.

“Independent Engineer” or “IE” has the meaning set forth in Section 8.02(d).

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

“Industry Standards” has the meaning set forth in Section 8.01(a).

“Inflexible Capacity” means, with respect to any particular Showing Month of the Delivery Period, the number of MWs of Product which are not eligible to satisfy Flexible RAR. Inflexible Capacity is also known as ‘generic capacity’.

“Initial Commercial Operation Test” or “ICOT” means, the testing procedures, requirements, and protocols set forth in Appendix 7.

“Initial Delivery Date” has the meaning set forth in Section 2.04.

“Interconnection Facilities” means all apparatus installed between a Generating Unit and the Point of Interconnection on the PTO’s electrical system, other participating transmission owner’s system, or the CAISO Grid, to interconnect the Project to make the Product available to SCE and to make energy and other related products available to the CAISO Control Area, including connection, Tie-Line, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PTO’s electric system (or other participating transmission owner’s system to which the PTO’s electric system is connected, including the CAISO Grid) and SCE’s customers from faults occurring at the Generating Unit(s), and (b) the Generating Unit(s) from faults occurring on the PTO’s electric system or on other participating transmission owner’s system to which the PTO’s electric system is connected.

“Interconnection Queue Position” is the order of Seller’s valid request for interconnection relative to all other valid interconnection requests, as specified in Section 1.03(d).

“Interconnection Study” or “Interconnection Studies” means any of the studies defined in the Tariff or any PTO’s tariff that reflect methodology and costs to interconnect the Project to the PTO’s electric grid.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by Applicable Law.

“Interruptible Transportation Service” has the meaning set forth in the SoCalGas Tariff.

“JAMS” has the meaning set forth in Section 27.02.

“kW” means kilowatt or kilowatts.

“kWh” means kilowatt-hours.

“Lender” means any and all financial institutions that provide to Seller any development, bridge, construction, permanent debt, tax equity, Performance Assurance, or other form of financing or refinancing, or other credit support, relating to the Project.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Appendix 13.03(b) and acceptable to SCE, provided by Seller from an issuer acceptable to SCE that is either a U.S. financial institution or a U.S. commercial bank or a U.S. branch of a foreign bank with such financial institution or the bank (i) having a Credit Rating of at least (a) "A-" by S&P, “A-“ by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, “A-“ by Fitch, if such entity is rated by Fitch, and "A3" by Moody's, if such entity is rated by Moody’s; or (c) "A-" by S&P or "A3" by Moody's, or “A-” by Fitch if such entity is rated by only one Ratings Agency; and (ii) having shareholder equity (determined in accordance with GAAP) of at least $1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS). Costs of a Letter of Credit shall be borne by Seller.

“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 shall fail to maintain a Credit Rating of at least (i) "A-" by S&P, “A-“ by Fitch, and "A3" by Moody’s, if such issuer is rated by the Ratings Agencies, (ii) “A-“ by S&P, , “A-“ by Fitch or “A3” by Moody’s if such issuer is rated by only two of the Ratings Agencies, or (iii) “A-“ by S&P, “A-“ by Fitch, or "A3" by Moody’s, if such issuer is rated by only one Ratings Agency; (b) the issuer of such 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; or (e) the issuer of such Letter of Credit becomes Bankrupt; *provided*, 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.

“Local Capacity Area” has the meaning set forth in the Tariff.

“Local RAR” means the local resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Losses” means with respect to either Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, as described below. With respect to SCE, Losses shall be based on replacing the Product with product from new gas-fired generation capacity which has not yet been constructed and which would be considered a *[Western LA Basin Project or Moorpark Sub-Area Project]*. For purposes of determining Losses, Seller shall be deemed to have exercised its Energy Put Option for each and every remaining Contract Year of the Term.

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

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

“Market-Based Rate Authority” means authority granted by FERC to charge market-based rates for electrical power pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d.

“Market Clearing Price” or “MCP” means for each Settlement Interval, the Day-Ahead Market price for the hour in which such Settlement Interval falls for SP15.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Gas Index or information necessary for determining the Gas Index; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or in the market specified for determining a Gas Index; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any exchange or principal trading market specified for determining a Gas Index; or (e) a material change in the formula for or the method of determining the Gas Index.

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b.(a) to (f)).

“Master File” has the meaning set forth in the Tariff.

“Master Services Contract” means the “Master Services Contract,” as defined in the SoCalGas Tariff, between SoCalGas and Seller.

“Maximum Capacity Output” or “MCO” means the maximum output measured, as applicable, in gross kWs or net kWs a Generating Unit can sustain for the period of time specified in the Final Test Plan.

“Maximum Daily Start-Ups” has the meaning set forth in the Tariff.

“Mediator” has the meaning set forth in Section 27.02.

“Meter Service Agreement For CAISO Metered Entities” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the completed schedule in the form of Appendix 6.01(A), setting forth Seller’s Permit Milestones and construction milestones.

“Minimum Down Time” has the meaning set forth in the Tariff.

“Minimum Load” has the meaning set forth in the Tariff.

“Minimum Operating Limit” has the meaning set forth in the Tariff.

“Minimum Run Time” has the meaning set forth in the Tariff.

“MMBtu” means one (1) million British thermal units.

“MOL” means the “Minimum Generation Capacity” as set forth in Appendix 1.02.

“Monthly Available A/S Capacity” has the meaning set forth in Section 10.01(d)(i).

“Monthly Capacity Payment” means, as applicable, the Monthly RA Capacity Payment or the Monthly Energy Capacity Payment.

“Monthly Capacity Price” means, as applicable, the Monthly RA Capacity Price or the Monthly Energy Capacity Price.

“Monthly Energy Capacity Payment” has the meaning set forth in Section 9.02(b).

“Monthly Energy Capacity Price” means, for any month during a Put Delivery Period, the “Monthly Energy Capacity Price” applicable to such month set forth in Appendix 9.02.

“Monthly Price Shapes” are the percentages set forth in Appendix 9.02.

“Monthly RA Capacity Payment” has the meaning set forth in Section 9.02(a).

“Monthly RA Capacity Price” means, for any Showing Month during a RA Delivery Period, the “Monthly RA Capacity Price” applicable to such Showing Month set forth in Appendix 9.02.

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

“Moorpark Sub-Area High Voltage Substations” means the following substations located in the CAISO Control Area: Goleta, Moorpark, Santa Clara, Mandalay, and Ormond Beach.

“Moorpark Sub-Area Project” means a generating facility that directly connects to a (i) Moorpark Sub-Area High Voltage Substation, or (ii) lower voltage substation that electricallyconnects to a Moorpark Sub-Area High Voltage Substation. *[SCE Note: if applicable]*

“MSG Transition” has the meaning set forth in the Tariff.

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“Natural Gas Requirements” means all of the Project’s natural gas requirements during a Put Delivery Period, including the Required Natural Gas Quantity, natural gas for any Non-SCE Dispatch and any other purpose.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC/GADS Protocols” means the NERC Generating Availability Data System protocols, as may be updated from time to time.

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website.

“NERC Reliability Standards” means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by NERC and approved by the applicable regulatory authorities and available on the NERC website.

“Net Qualifying Capacity” has the meaning set forth in the Tariff.

“Network Upgrades” means all apparatus, modifications, and upgrades to the PTO’s electric system, CAISO Grid or, if applicable, participating transmission owner’s system that are required at or beyond the Point of Interconnection to accommodate the Project’s output.

“Network Upgrades Cap” has the meaning set forth in Section 4.02(a).

“New Resource” means that the Project (a) has a remaining design life of at least thirty (30) years after the Initial Delivery Date as attested by an engineering assessment performed by a professional mechanical engineer (with experience acceptable to SCE in its sole discretion) licensed by the State of California; (b) will provide incremental capacity to the region of the CAISO’s control area known as SP15; and (c) is a *[Western LA Basin Project or Moorpark Sub-Area Project]*.

“Non-AB 32 GHG Credits” means any instrument, which is similar to an CCA, credit, allowance, Emission Reduction Credit, or other similar right to emit Greenhouse Gas issued by a Governmental Authority, related to the right to emit Greenhouse Gas in accordance with Applicable Laws, other than AB 32 and the GHG Regulations.

“Non-Availability Charges” has the meaning set forth in the Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 3.03.

“Non-SCE Dispatch” means a dispatch by Seller either (a) pursuant to a Seller Initiated Test or (b) as required by Applicable Laws.

“Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff.

“Non-Spinning Reserve” has the meaning set forth in the Tariff.

“Notice” has the meaning set forth in Section 30.02.

“NYMEX” means the New York Mercantile Exchange.

“Obligation Month” has the meaning set forth in Section 11.01.

“OEM” means the original equipment manufacturer recommendation.

“Offset Credit” has the meaning set forth in the GHG Regulations.

“Offset Credit Limit” means the total amount of Offset Credit(s) that SCE may convey to Seller during any given Compliance Period, which is calculated by multiplying (i) the Quantitative Usage Limit and (ii) the total AB 32 Compliance Obligation during all Put Delivery Periods.

“Operating Day” means a day within a Put Delivery Period on which the Project operates.

“Operating Reserve Ramp Rate” has the meaning set forth in the Tariff.

“Operating Restrictions” means, subject to Section 20.05, limitations on SCE’s ability to schedule and use Capacity, Ancillary Services, and Energy during a Put Delivery Period that are identified in Appendix 1.02.

“Outage” has the meaning set forth in the Tariff.

“Outage Management System” has the meaning set forth in Section 20.01.

“Outage Schedule” has the meaning set forth in Section 22.01.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” or “PTO” means any entity or entities responsible for the interconnection of the Project with a Control Area or transmitting the Energy on behalf of Seller from the Project to the Point of Interconnection.

“Party” or “Parties” has the meaning set in the preamble.

“Performance Assurance” means collateral, including Delivery Date Security, in the form of cash or a Letter of Credit.

“Performance Tolerance Band” means the lesser of (a) three percent (3%) of a Generating Unit’s PMax divided by the number of Settlement Intervals in an hour, (b) five (5) MW divided by the number of Settlement Intervals in an hour, or (c) the applicable Regulation Award divided by the number of Settlement Intervals in an hour. If, at any time, the CAISO implements changes to the Performance Tolerance Band, then the Parties agree to negotiate in good faith to amend this definition to maintain the economic benefits and burdens contemplated under this Agreement.

“Performance Tolerance Band Lower Limit” means the quantity of Energy determined for a Settlement Interval equal to Scheduled Energy minus the Performance Tolerance Band.

“Performance Tolerance Band Upper Limit” means the quantity of Energy determined for a Settlement Interval equal to Scheduled Energy plus the Performance Tolerance Band.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including limitations on any pollutant emissions levels, limitations on fuel combustion or heat input throughput, limitations on operational levels or operational time, limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credits or Marketable Emission Trading Credits, or any other operational restriction or specification related to compliance with any Applicable Laws.

“Planned Outage” has the meaning set forth in the Resource Adequacy Rulings, namely a planned outage for the routine repair or maintenance of any of the Generating Unit(s), or for the purposes of new construction work, and does not include any outage designated as forced or unplanned as defined by the CAISO or NERC/GADS Protocols.

“PMAX” or “Pmax” means the applicable CAISO-certified maximum operating level of a Generating Unit.

“PMIN” or “Pmin” means the applicable CAISO-certified minimum operating level of a Generating Unit.

“PNode” has the meaning set forth in the Tariff.

“Point of Interconnection” has the meaning set forth in Section 1.03(c).

“Price Source” means, the publication (or such other origin of reference, including an exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) used for determining the Gas Index.

“Procurement Review Group” or “PRG” has the meaning set forth in Section 29.02(a).

“Product” means (a) during any Put Delivery Period, any and all Energy, Capacity, Ancillary Services, Ancillary Service Capacity and Resource Adequacy Benefits, or any other benefits associated therewith, associated with the Project under the terms of this Agreement, and (b) during any other portion of the Delivery Period, all Resource Adequacy Benefits associated with the Project, provided that:

(i) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Resource Adequacy Benefits related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(ii) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of the Project related to Flexible RAR, that results in a decrease or increase in the amount of Resource Adequacy Benefits related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity Areas whereby the Project subsequently qualifies for a Local Capacity Area, the Product shall include all Resource Adequacy Benefits related to such Local Capacity Area; and

(iv) the Parties agree that if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Resource Adequacy Benefits related to Flexible RAR, or attributes of any Generating Unit related to Flexible RAR whereby any Generating Unit, or a portion of any Generating Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Resource Adequacy Benefits of all Generating Units related to Flexible RAR, including any Resource Adequacy Benefits related to Flexible RAR with respect to any portion of the Generating Units which previously were not able to satisfy Flexible RAR.

“Project” means the Generating Unit(s) and the Interconnection Facilities (owned by Seller or Seller’s Affiliate) up to the Point of Interconnection, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at the facility, excluding the Site, land rights and interests in land and as more fully described in Appendix 1.03.

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreement or other related agreements for the Project.

“PTC 22” means the American Society of Mechanical Engineers Performance Test Code, ASME PTC-22-2005 – Gas Turbines, and as may be revised or amended from time to time.

“PTC 46” means the American Society of Mechanical Engineers Performance Test Code, ASME PTC-46-1996 - Overall Plant Performance, and as may be revised or amended from time to time.

“Put Delivery Period” has the meaning set forth in Section 2.05.

“Qualifying Delivered Energy” means the lesser of Delivered Energy or the Performance Tolerance Band Upper Limit for each Settlement Interval during a Put Delivery Period. Qualifying Delivered Energy shall be zero (0) (i) during a Seller Initiated Test; (ii) during a Non-SCE Dispatch; (iii) if the Delivered Energy is less than PMin minus the Performance Tolerance Band; or (iv) during a Start-Up.

“Quantitative Usage Limit” has the meaning set forth in the GHG Regulations.

“RA Adjustment” has the meaning set forth in Section 10.01(b).

“RA Capacity Qualification Tests” means any and all tests, certifications or performance evaluations required by CAISO, the CPUC or any other applicable Governmental Authority pursuant to any Applicable Laws, including without limitation the Tariff, in order for a Generating Unit to obtain, maintain or update a Unit NQC and Unit EFC, including without limitation, testing for PMAX.

“RA Compliance Obligations” means the RAR, Local RAR and Flexible RAR.

“RA Delivery Period” has the meaning set forth in Section 2.05.

“RA Replacement Capacity” has the meaning set forth in the Tariff.

“RAR” means the resource adequacy requirements established for load-serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the Tariff, or by any other Governmental Authority having jurisdiction.

“Ratings Agency” shall mean any of S&P, Moody’s and Fitch, and any other rating agency agreed by the Parties (collectively the “Ratings Agencies”).

“Real-Time Market” has the meaning set forth in the Tariff.

“Reduced Monthly Energy Capacity Payment” has the meaning set forth in Section 10.01(e).

“Reference Market-Maker” means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

“Regulation Award” for each Settlement Interval, shall mean either (i) with respect to the Performance Tolerance Band Upper Limit, the greater of the fifteen-minute HASP Regulation Up awards for the period within such Settlement Interval falls, or (ii) with respect to the Performance Tolerance Band Lower Limit, the greater of the fifteen-minute HASP Regulation Down awards for the period within such Settlement Interval falls.

“Regulation Down” has the meaning set forth in the Tariff.

“Regulation Ramp Rate” has the meaning set forth in the Tariff.

“Regulation Up” has the meaning set forth in the Tariff.

“Reliability Must-Run Contract” or “RMR Contract” has the meaning set forth in the Tariff.

“Repair Plan” has the meaning set forth in Section 8.02(c).

“Representatives” means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with this Agreement and, in the case of SCE, includes the Independent Evaluator.

“Required Natural Gas Quantity” has the meaning set forth in Section 16.08(c)(iv).

“Required Permits” has the meaning set forth in Section 5.01(b).

“Required Permit Date” means the date set forth in Section 5.01(b).

“Resold Product” has the meaning set forth in Section 12.05.

“Resource Adequacy” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Availability Management” or “RAAM” has the meaning set forth in Section 19.05.

“Resource Adequacy Benefits” means, with respect to any Generating Unit, any and all of the following, in each case which are attributed to or associated with the Generating Unit at any time throughout the Delivery Period:

1. resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;
2. resource adequacy attributes or other locational attributes for the Generating Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Generating Unit within the CAISO Control Area, that can be counted toward a Local RAR;
3. flexible capacity resource adequacy attributes for the Generating Unit, including, without limitation, the amount of Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR; and
4. other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any RA Compliance Obligations.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“Resource ID” has the meaning set forth in the Tariff.

“Resource-Specific Settlement Interval LMP” has the meaning set forth in the Tariff.

“Responsible Officer” means the chief financial officer, treasurer or any assistant treasurer of a Party or any employee of a Party designated by any of the foregoing.

“Retest” has the meaning set forth in Appendix 7, PART II. K.

“RUC Availability Payments” has the meaning set forth in the Tariff.

“Satellite Communications System” or “SCS” means a system provided to Seller by SCE at SCE’s cost for emergency voice communications between SCE and Seller’s operating staff for the Project.

“S&P” means Standard & Poor’s Financial Services LLC or its successor.

“SC” has the meaning set forth in the Tariff.

“SC Replacement Date” has the meaning set forth in Section 19.04.

“SC Set-Up Fee” has the meaning set forth in Section 19.01.

“SCE” has the meaning set forth in the preamble.

“SCE Final Test Plan” has the meaning set forth in Appendix 7, PART III.A.

“SCE’s Pool Imbalance Penalty” means the aggregate of imbalance charges or penalties incurred by SCE as a result of SCE’s aggregate system pool quantity imbalance (including the impact of Seller’s Gas Event) for the month during which the Seller’s Gas Event occurred.

“SCE Proposed Test Plan” has the meaning set forth in Appendix 7, PART III. A.

“Schedule” means the action of SCE in submitting Bids to the CAISO and receiving all CAISO Markets results from the CAISO.

“Scheduled Energy” means, the Energy from a Generating Unit expected to be delivered during each Settlement Interval to the Energy Delivery Point pursuant to (a) the latest Dispatch Notice, or (b) any CAISO instructions during a Put Delivery Period, including (i) Supplemental Energy bids or (ii) Ancillary Services exercised. If, in any Settlement Interval, the expected energy normally published by CAISO is unavailable, incomplete, or does not conform to the Operating Restrictions of the Generating Unit, then for settlement purposes for that Settlement Interval only, the Scheduled Energy shall be deemed to be the Delivered Energy. In the case where PMax and Scheduled Energy are greater than the GU Contract Capacity, then for settlement purposes for that Settlement Interval only, the Scheduled Energy shall be deemed to be the GU Contract Capacity.

“Scheduling and Delivery Deviation Administrative Charge” or “SDD Administrative Charge” has the meaning set forth in Section 19.06.

“Scheduling and Delivery Deviation Charge” or “SDD Charge” has the meaning set forth in Section 19.06.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article Nineteen.

“SDD Admin Price” means any administrative charge applied by the CAISO due to “Uninstructed Imbalance Energy” or successor term as defined in the Tariff.

“SDD Price” means, for each Generating Unit, the applicable Resource-Specific Settlement Interval LMP; *provided*, in no case shall the SDD Price be less than zero (0).

“SEC” means the United States Securities and Exchange Commission.

“Security Interest” has the meaning set forth in Section 13.04.

“Seller” has the meaning set forth in the preamble.

“Seller Initiated Test” has the meaning set forth in Section 7.03(c).

“Seller’s Proposed Test Plan” has the meaning set forth in Appendix 7, PART III. A.

“Seller’s Fleet” has the meaning set forth in Section 15.03(d)(ii).

“Seller’s Gas Event” as set forth in Section 16.09.

“Seller’s Gas Costs” means the cost, expressed in US$, for the quantity of gas, expressed in MMBtu, delivered to the Gas Delivery Point for all applicable hours of each day that gas is delivered for a Seller’s Gas Event multiplied by the Delivered Gas Cost, expressed in $/MMBtu for the applicable calendar day.

“Seller’s Imbalance Penalty” has the meaning set forth in Section 16.09(c).

“Seller’s Insurance” has the meaning set forth in Section 30.15.

“Settlement Interval” has the meaning set forth in the Tariff.

“Shortfall Capacity” has the meaning set forth in Section 12.06.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Simple Interest” means the product of the following three factors: (a) dollar amount on which an interest payment is based; (b) Federal Funds Effective Rate; and (c) the number of days in the calculation period divided by 360.

“Site” means the real property on which the Project is, or will be located, as further described in Section 1.02(e) and Appendix 1.03.

“Site Certification” means the “California Energy Commission Power Facility and Site Certification” set forth in Section 5.01(b).

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority to act in all matters relating to, the control and operation of, the Site and the Project.

“SLIC” has the meaning set forth in the Tariff.

“SoCalGas” means the Southern California Gas Company, or any successor thereto.

“SoCalGas Billing Meter” means a revenue quality meter owned by SoCalGas (i.e., a meter meeting the standards and requirements established and maintained by SoCalGas) used to measure the quantity of natural gas delivered from the SoCalGas system to a Generating Unit or the Project, as applicable, for the purpose of monthly billing by SoCalGas.

“SoCalGas Schedule No. G-MSUR” means the “Transported Gas Municipal Surcharge” as provided by SoCalGas in the SoCalGas Tariff.

“SoCalGas Schedule No. GT-F” means “Firm Transportation Service for Distribution Level Customers” as provided by SoCalGas in the SoCalGas Tariff.

“SoCalGas Schedule No. GT-TLS” means “Firm Transportation Service for Transmission Level Customers” as provided by SoCalGas in the SoCalGas Tariff.

“SoCalGas Tariff” means Southern California Gas Company’s tariff filed with the CPUC, as amended or supplemented from time to time.

“Spinning Reserve” has the meaning set forth in the Tariff.

“SP15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the Tariff.

“Specified RA Replacement Capacity” has the meaning set forth in the Tariff.

“Start-Up” means the action of bringing a Generating Unit from shut down status to synchronization with the grid, attainment of its PMin, and the availability of unconditional release of such Generating Unit ready for ramping to the applicable dispatch instruction. During a Put Delivery Period, a Start-Up can only result from a Dispatch Notice and is complete once all of the conditions in the preceding sentence are met.

“Start-Up Aux Charge” means the product of the applicable Start-Up Aux Energy and the sum of the “energy charge” rates (under the column headers “Delivery Service” and “Generation”) set forth in SCE Tariff Rate Schedule TOU-8 Time-of-Use-General Service-Large for “Service Metered and Delivered at Voltages above 50 kV” applicable to the appropriate “peak” period and in effect at the time of the applicable Start-Up. If a Start-Up falls within multiple “peak” periods (on-peak, mid-peak, or off-peak), then the Start-Up Aux Charge shall be calculated by applying the applicable “energy charge” rates to the Start-Up Aux Energy amount proportional to amount of time elapsed under each applicable “peak” period.

“Start-Up Aux Energy” means the applicable amount of energy (MWh) required to Start-Up the Generating Unit specified in Appendix 9.05.

“Start-Up Charge” is the applicable charge ($) required to Start-Up the Generating Unit as specified in Section 9.05.

“Start-Up Fuel” is the applicable volume of natural gas, expressed in MMBtu, required to Start-Up the Generating Unit as specified in Appendix 9.05.

“Start-Up Time” means the applicable amount of time (minutes) required to Start-Up the Generating Unit specified in Appendix 9.05.

“Station Use” means the electrical load of the Project’s auxiliary equipment that are necessary for operation of the Generating Unit(s) as set forth in Appendix 1.3. The auxiliary equipment includes, but is not limited, to forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems and sump pumps.

“Substitution Costs” has the meaning set forth in Section 19.05(b).

“Substitution Rules” has the meaning set forth in Section 19.05(b).

“Successful Repair” means that, immediately upon completion of the repairs to a Generating Unit, (a) with respect to any event described in Section 8.02(c)(i), Seller conducts an RA Capacity Qualification Test, at Seller’s expense, and obtains a Unit NQC for the applicable Generating Unit equal to or greater than ninety-eight percent (98%) of GU Contract Capacity for such Generating Unit, and (b) with respect to any event described in Sections 8.02(c)(ii) or (iii), Seller demonstrates, at Seller’s expense, to SCE’s reasonable satisfaction that such Generating Unit has and can (i) Start-Up and ramp up to and remain at full load for two (2) consecutive hours, and (ii) immediately thereafter remain available for dispatch under this Agreement by a quantity equal to or greater than ninety-eight percent (98%) of GU Contract Capacity for seven (7) consecutive days. Only upon the Successful Repair of a Generating Unit during any Put Delivery Period will SCE be responsible for Variable O&M Charges and the Gas Costs of such Generating Unit to demonstrate a Successful Repair. Until such a Successful Repair is demonstrated, any test of the Generating Unit shall be deemed a Seller Initiated Test and the Generating Unit will be deemed unavailable; *provided*, upon Seller’s demonstration of a Successful Repair, the Generating Unit will be deemed available retroactive to the hour that it started up and ramped to full load under this definition.

“Successor” has the meaning set forth in Section 13.01.

“Supplemental Energy” is the Energy from the Project which have uncommitted capacity following finalization of the HASP awards and available to the CAISO during the Real Time Market.

“Supply Plan” has the meaning set forth in the Tariff.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“Term” has the meaning set forth in Section 2.01.

“Termination Payment” has the meaning set forth in Section 3.04.

“Test” has the meaning set forth in the first paragraph of Appendix 7.

“Test Conditions” has the meaning set forth in Appendix 7, PART II.F.

“Test Day” as the meaning set forth in the first paragraph of Appendix 7.

“Test Element” has the meaning set forth in Appendix 7, PART II.A.

“Test Parameters” has the meaning set forth in Section 1.02(d).

“Test Uncertainty Analysis” means a measurement of the testing error.

“Tie-Line” means the transmission or distribution line between the Energy Delivery Point and the Point of Interconnection as more fully described in Appendix 1.03(a).

“Trading Day” means the day in which Day-Ahead trading occurs in accordance with the WECC Prescheduling Calendar.

“Trading Hour” has the meaning set forth in the Tariff.

“Transition Cost” means the applicable fixed cost ($) required for the Generating Unit to make an MSG Transition as set forth in Appendix 9.05 under the heading “Fixed Transition Cost ($)”.

“Transition Fuel” means the applicable volume of natural gas, expressed in MMBtu, required for the Generating Unit to make an MSG Transition as set forth in Appendix 9.05 under the heading “Transition Fuel (MMBtu)”.

“Transport Cost” has the meaning set forth in Section 16.08(b).

“UDP Implementation” means the date that UDP will be applied to each SC by the CAISO.

“Uninstructed Deviation Penalty” or “UDP” has the meaning set forth in the Tariff.

“Uninstructed Imbalance Energy”, or any successor term, has the meaning set forth in the Tariff.

“United States Bankruptcy Code” means 11 U.S.C. §101 *et seq*., as amended, and any successor statute.

“Unit EFC” means the effective flexible capacity (in MWs) of the applicable Generating Unit pursuant to the counting conventions set forth in the Resource Adequacy Rulings and Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Generating Unit.

“Variable O&M Charge” means the applicable rate ($/MWh) for a Generating Unit as specified in Appendix 9.04.

“Variable O&M Payment” has the meaning set forth in Section 9.04.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

“WECC Prescheduling Calendar” has the meaning used on the WECC website at http://www.wecc.biz.

“Western LA Basin High Voltage Substations” means the following substations located in the CAISO Control Area: Alamitos, Barre, Center, Chevmain, Del Amo, Eagle Rock, El Nido, El Segundo, Ellis, Goodrich, Gould, Hinson, Huntington Beach, Johanna, La Cienega, La Fresa, Laguna Bell, Lewis, Lighthipe, Long Beach, Mesa, Olinda, Redondo, Rio Hondo, Santiago, Viejo, Villa Park, and Walnut.

“Western LA Basin Project” means a generating facility that directly connects to a (i) Western LA Basin High Voltage Substation, or (ii) lower voltage substation that electrically connects to a Western LA Basin High Voltage Substation. *[SCE Note: if applicable]*

“Wholesale Distribution Access Tariff” or “WDAT” means the tariff through which open access transmission service and interconnection service are offered by SCE, as filed with FERC, and as amended or supplemented from time to time, or any successor tariff.

“WMDVBE” means women, minority, and disabled veteran business enterprise, as more particularly set forth in CPUC General Order 156.

**APPENDIX 1.02**

**CONTRACT CAPACITY, ANCILLARY SERVICES AND OPERATING RESTRICTIONS**

Excel Appendices

**APPENDIX 1.03**

**DESCRIPTION OF GENERATING UNITS**

Excel Appendices

**APPENDIX 1.03(a)**

**ENERGY DELIVERY POINT**

Single-line diagram depicting grid interconnection

**APPENDIX 1.03(b)**

**GAS DELIVERY POINT; SOCALGAS BILLING METER**

Drawing depicting interconnection of SoCalGas system to each Generating Unit

Appendix 6.01(A)

**MILESTONE SCHEDULE**

Project Schedule -

Seller has provided dates for development, construction, commissioning, and testing of the Project, showing all significant elements and milestones, as applicable, such as permitting, procurement, turbine first fire, financing, engineering, acceptance testing, Seller’s proposed Expected Initial Delivery Date, and proposed Delivery Period.

| No. | Projected Completion Date | Milestone |
| --- | --- | --- |
| 1 |  | **Front End Engineering / Permits / Agreements** |
| 2 |  | Submit Applicable Participating Transmission Owner Interconnection Application |
| 3 |  | File a CEC Certification and Verification Application |
| 4 |  | Receive a Completed Interconnection System Impact Study (or equivalent) |
| 5 |  | Receive a Completed Interconnection Facilities Study (or equivalent) |
| 6 |  | Finalize Labor Agreement Negotiations |
| 7 |  | Execute a Participating Transmission Owner Tariff and/or Applicable Service Agreement and/or WDAT and Interconnection Facilities agreement |
| 8 |  | Receive FERC Acceptance of Interconnection Agreement and Transmission Agreement(s) |
| 9 |  | Receive CEC Certification and Verification or APCD permit if applicable |
| 10 |  | Obtain Control Of All Lands and Rights-Of-Way Comprising The Site |
| 11 |  | Receive CEC Full Notice To Proceed |
| 12 |  | Receive All Other Required Permits |
| 13 |  | **Financing** |
| 14 |  | Verify That Seller’s Bank Has Received All Required Due Diligence Information |
| 15 |  | Complete Bank Financing |
| 16 |  | **Engineering** |
| 17 |  | Execute EPC Contract |
| 18 |  | Begin Existing Site Re-Engineering |
| 19 |  | Begin New Power Plant Engineering Design |
| 20 |  | Lump Sum Estimate Preparation |
| 21 |  | Complete Existing Site Re-Engineering |
| 22 |  | Complete New Power Plant Engineering Design |
| 23 |  | **Construction – Initial Site Work** |
| 24 |  | Begin Civil Tasks - CTG’s |
| 25 |  | Begin Mechanical Tasks - U/G Piping |
| 26 |  | Begin Electrical Tasks - U/G Electrical |
| 27 |  | **Construction** |
| 28 |  | Begin Construction Of Project - Erect Equipment |
| 29 |  | Civil Tasks - Balance of Plant |
| 30 |  | Mechanical Tasks - A/G Piping |
| 31 |  | Electrical Tasks - A/G Electrical |
| 32 |  | Erect Heat Recovery Steam Generator |
| 33 |  | Commission Heat Recovery Steam Generator |
| 34 |  | Erect Gas Turbine |
| 35 |  | Commission Gas Turbine |
| 36 |  | Erect Steam Turbines |
| 37 |  | Commission Steam Turbines |
| 38 |  | Erect Generators |
| 39 |  | Commission Generators |
| 39 |  | Complete Construction Of The Project |
| 40 |  | **Commissioning** |
| 41 |  | Begin Start-Up Activities - BOP Systems |
| 42 |  | Achieve Initial Operation |
| 43 |  | Demonstrate Contract Capacity |
| 44 |  | Expected Initial Delivery Date |

**APPENDIX 6.01(B)**

**CONSTRUCTION REPORT**

Monthly Project Progress Report

From the Effective Date of this Agreement and continuing until the Initial Delivery Date, Seller will provide a monthly Project Progress Report containing, at a minimum, the information listed below.

1. An executive summary;
2. Project bar chart schedule (including current status of all events);
3. Assessment of percent construction complete and percent change from immediately previous report;
4. Description of general work status (including short passages as applicable) on:

Engineering;

Procurement;

Permitting (include status of any required regulatory determinations for approval of Federal New Source Review permitting exemptions, expedited permitting processes, and status of acquisition of required ERCs and other emission credits in terms of impact on the Project’s permitting schedule, over-all Project schedule, and ability of Project to meet the Expected Initial Delivery Date);

Major construction activities in the prior month;

Testing;

Electrical interconnection status;

Fuel gas interconnection status; and

Any other required interconnections.

1. Forecast activities for next month; and
2. Potential issues affecting the Project.

Seller must notify SCE’s contract manager for the Agreement in writing of its receipt of any additional documents, which fall into the categories, listed (in a – f) below, and make such documents available to SCE within two (2) Business Days of such receipt:

All material written commitments regarding construction work at the Project that could impact completion schedule or Initial Delivery Date;

Executed work orders for construction of the Project;

Construction agreements;

Letters of intent;

Precedent agreements; and

Engineering assessments of the Project or any Generating Unit.

**APPENDIX 7**

**TESTING PROTOCOLS**

**INITIAL COMMERCIAL OPERATION and**

**CONTRACT CAPACITY & ANCILLARY SERVICE TESTS**

*Simple and Combined Cycle Generating Units*

This Appendix 7 sets forth the protocols for (i) the Initial Commercial Operation Test that each Generating Unit must successfully complete in order to achieve Commercial Operation and which sets the level of GU Contract Capacity for each Generating Unit, and (ii) the Contract Capacity & Ancillary Services Test. The Initial Commercial Operation Test and the Contract Capacity & Ancillary Services Tests are sometimes referred to in this Appendix individually as a “Test” and jointly as the “Tests.” Each Test may last up to three (3) days. Each day any Test is conducted shall constitute a “Test Day”.

PART I. GENERAL.

The Initial Commercial Operation Test and each Contract Capacity & Ancillary Service Test will be conducted in accordance with Accepted Electrical Practices and the guidelines of PTC 22 or PTC 46, as applicable.

PART II. REQUIREMENTS APPLICABLE TO ALL TESTS.

A. Test Elements. The first Test Day shall require Seller to perform validation of the following for each Generating Unit (each a “Test Element”):

1. Capability to achieve the Maximum Capacity Output within 10 minutes from being off-line.
2. Capability to be started and achieve Minimum Load within the time(s) set forth in Appendix 1.02.
3. Capability to achieve and maintain stated GU Contract Capacity; and in the case of the Initial Commercial Operation Test, set the GU Contract Capacity.
4. Regulation Ramp Rates.
5. Heat Rate at GU Contract Capacity.

The applicable Test Parameters shall be used to correct the GU Contract Capacity and Heat Rate test data results in accordance with PART III.F. of this Appendix. The second (2nd) and third (3rd) day of the Test (not including no more than two (2) additional days if required to complete each Test Element) will be conducted at SCE’s sole discretion; *provided*, no performance measurements shall be taken. During this period, the Generating Unit(s) shall be operated to demonstrate MCO and/or Contract Capacity (as applicable), Minimum Load and respective ramp rates (ramp up and down) to the satisfaction of SCE.

B. Parameters. During any Test, at a minimum, the following parameters will be measured and recorded on a contemporaneous basis in increments of no more than thirty (30) seconds, but not less ten (10) seconds (except for fuel samples)**1,2**:

* + - * 1. Each Generating Unit(s) gross and net electrical output (kW) at MCO, GU Contract Capacity and MOL at the Generating Unit terminals and Energy Delivery Point, respectively.
        2. Net Project output (kWh) since last measurement at the Energy Delivery Point.
        3. Instantaneous ambient barometric pressure (psia) with two instruments located near the horizontal centerline of each Generating Unit.
        4. Instantaneous ambient relative humidity (%) with two instruments installed at the inlet filter house.
        5. Instantaneous inlet air temperature (°F) with a minimum of four (4) instruments installed in an array inside the filter house downstream of the inlet air treatment system.
        6. CEMS (as defined below) permitted emissions data (required per air permit).
        7. Turbine shaft operating speed (rpm).
        8. Turbine operating temperatures (°F).
        9. Turbine operating pressures (psig).
        10. Fuel flow (ft3/min) at each Generating Unit fuel meter (including duct burners if applicable).

Note 1 – Including any adjustment for loss factors as certified by the CAISO for the Energy Metering Equipment

Note 2 – If using multiple instruments, the average result of all instruments shall be used.

Seller shall also take two (2) fuel samples during the start, middle and end of the Contract Capacity and Heat Rate Test Elements for a total of six (6) samples. One (1) sample each of the respective pair will be sent to an independent laboratory for testing at Seller’s expense.

Upon mutual agreement of the Parties, additional parameters may be measured and recorded simultaneously with the required parameters.

1. Demonstration. Seller must demonstrate to SCE’s satisfaction, that each Generating Unit can perform the following:
   * + - 1. Successfully start, synchronize to the grid and achieve MCO.
         2. Operate four (4) hours at GU Contract Capacity.
         3. Operate one (1) hour at Minimum Load.
         4. Ramp both upwards and downwards at the rates set forth in Appendix 1.02.
         5. Shut down without resorting to any unusual procedures.

SCE, in its sole descretion, may elect to shorten or waive a particular portion of a Test at any time. Such election or waiver of one Test does not shorten any run period or waive any portion of any subsequent Test.

1. Stability and Variation. Prior to commencing the Contract Capacity, Heat Rate and MOL Test Element, Seller is permitted to operate the Generating Unit(s) for up to one (1) hour to achieve stable operating conditions. In addition, variations of the following parameters shall be within the tolerances provided in the following table for both the stabilization and Test period3:

Generating Unit Performance

Maximum Permissible Standard Deviations**3**

|  |  |
| --- | --- |
| Variable | Permissible Deviation |
| Power Factor | + 2.0 % |
| Net and Gross Power Out (kW) | + 2.0 % |
| Rotating Speed (rpm) | + 2.0 % |
| Barometric Pressure (psia) | + 0.5 % |
| Inlet Air Temperature | + 1.3 °F |
| Absolute Exhaust Back Pressure | + 0.5 % |
| Fuel Heating Value (per unit volume) | + 1.0 % |
| Fuel Pressure to Engine (psig) | + 1.0 % |
| Fuel Flow to Engine (ft3/min) | + 2.0 % |
| Steam Turbine Variables |  |
| Initial Steam Pressure | + 3.0 % |
| Initial and Reheat Steam Temperature | + 30.0 °F |
| Feed-water Temperature | + 10.0 °F |
| Exhaust Pressure (whichever is larger) | + 0.5 psi or + 2.5 % of abs press. |
| Note 3 – For purposes of a Test, as measured over a fifteen (15) minute period excluding the stabilization period | |

1. Final Test Plan. At all times during a Test, the Project shall be operated in compliance with the Final Test Plan.

.

1. Test Conditions. At all times during a Test, the Generating Unit(s) shall be operated with any inlet air cooling systems “ON” that would ordinarily be “ON” at the prevailing ambient conditions per the original equipiment manufacturer recommendations (“OEM”). Additionally, the Generating Unit(s) shall not be subject to any abnormal operating conditions such as (i) unstable load; (ii) equipment operation or regulatory restrictions other than the Operating Restrictions; (iii) changes in the Generating Unit(s)’ electrical output other than fluctuations naturally arising from variations in ambient temperature (such conditions which satisfy this Item F, “Test Conditions”). If abnormal operating conditions occur during a Test, SCE, in its sole discretion, may postpone or reschedule all or part of such Test in accordance with PART II.J. or PART II.K. below.
2. Applicable Laws and Permits. The Generating Unit(s) shall at all times be operated in compliance with all Applicable Laws and permits, including those governing safety, air and water emissions during any Test.
3. Air Emissions. All air emissions permit conditions shall be met during any Test. The Generating Unit(s)’ validated Continuous Emission Monitoring System (“CEMS”) (as such system is defined in South Coast Air Quality Management District’s Regional Clean Air Incentives Market or RECLAIM, Rule 2000(c)(18), as may be amended from time-to-time), shall be the required instrumentation for demonstrating compliance with NOx emissions requirements during the Test for Generating Unit(s) located in the SCAQMD. For Generating Unit(s) located in Air Pollution Control Districts other than the SCAQMD, the preferred instrumentation for demonstrating compliance with NOx emissions requirements during the Test should be installed, maintained and operated in accordance with 40 C.F.R. Part 75 Continuous Emission Monitoring: Subchapter C, Operation and Maintenance Requirements, which includes by reference Appendix A to part 75, Quality Assurance and Quality Control Procedures. For Generating Unit(s) subject to a federal New Source Performance Standard requiring installation of a continuous emission monitoring system (40 C.F.R. Part 60.13 “Monitoring Requirements;” 40 C.F.R. Part 60, Appendix B “Performance Specifications”; and Appendix F “Measurement of Emissions of Other Regulated Pollutants”) must occur during the Tests to demonstrate compliance according to permit conditions for emissions monitoring required by the applicable Air Pollution Control District as stipulated on the Generating Unit(s)’ permit to construct or permit to operate. If the CEMS fails during the Test, temporary, certified emission monitoring equipment may be substituted at SCE’s sole discretion.
4. Test Records. Seller shall provide records of all Test Day data to SCE no later than four (4) Business Days following completion of a Test. The records shall include the measured data recorded to comply with PART II. B and PART II. D of this Appendix. Copies of the raw performance data recorded during the Test shall also include the following4:

|  |  |
| --- | --- |
| Site Ambient Temperature | °F (Dry Bulb) |
| Status of Air Inlet Cooling System | ON/OFF |
| Power Factor | # |
| Steam/Water Injection Status | ON/OFF |
| Power Augmentation Status | ON/OFF |
| Fuel Gas Higher Heating Value | BTU/FT**5** |

4 – Data shall be sumbitted in an electronic format prescribed no later than the first Test Day by SCE

5 - If the fuel analysis is not available by the fourth (4th) Business Day after the Test is completed, Seller shall provide such data on the earlier of when available or ten (10) Business Days after the Test is completed.

If the test records provided to SCE in accordance with PART II.I. conflict with the test records and/or notes recorded by the SCE representative present during such Test, and/or its agent attending such Test on SCE’s behalf, SCE may require the Test to be repeated by the Seller or conducted by SCE or its agent and attended by Sellers’s representatives at Seller’s expense.

1. Incomplete Test. If any Test is not completed in accordance herewith, SCE may, in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is the ICOT); (ii) require that the portion of the Test not completed, be done so within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Notwithstanding the above, if Seller is unable to complete a Test due to a Seller’s Force Majeure or the actions or inactions of SCE or the CAISO, Seller shall be permitted to reconduct such Test as a Seller Initiated Test on dates and at times reasonably acceptable to SCE.
2. Retest. After the successful completion of a Test, Seller has the right, for any reason, to conduct a maximum of two (2) “Retests” at Seller’s sole expense including Gas Costs. For the avoidance of doubt, the limitation on retesting set forth in the preceding sentence does not apply to any testing of a Generating Unit other than a ICOT or CCAST.

If prior to the Commercial Operation of any Generating Unit, (a) a Catastrophic Equipment Failure occurs with respect to such Generating Unit, and (b) Seller is able to make temporary repairs to such Generating Unit in a manner that would allow such Generating Unit to reach Commercial Operation but at a level lower than 80% of its Expected Contract Capacity, and (c) Seller is able to complete permanent repairs to such Generating Unit no later than six (6) months after such Commercial Operation that would increase the performance of such Generating Unit to at least 90% of its Expected Contract Capacity, then Seller may, no later than the Initial Delivery Date, present SCE with a description of such Catastrophic Equipment Failure and a plan and schedule for completing such temporary repairs and such permanent repairs. If SCE agrees with such plan and schedule, then such plan and schedule shall constitute an “Approved Repair Plan.” If SCE and Seller disagree about such plan and schedule, then SCE may, at Seller’s expense, hire an Independent Engineer to assess the situation and make recommendations for completing such temporary repairs and such permanent repairs, and such recommendations (which shall include a plan and schedule for such repairs) shall constitute the Approved Repair Plan. Seller shall be permitted to conduct the ICOT for such Generating Unit in accordance with Article Seven after the completion of the temporary repairs contemplated by the Approved Repair Plan for such Generating Unit, and such ICOT will determine the GU Contract Capacity for such Generating Unit. Thereafter, if the permanent repairs contemplated by the Approved Repair Plan for such Generating Unit are completed within the earlier of (i) six (6) months after the Initial Delivery Date or (ii) the completion date for such repairs as set forth in such Approved Repair Plan, Seller shall be permitted to conduct an additional ICOT for such Generating Unit in accordance with Article Seven and the GU Contract Capacity for such Generating Unit for the remainder of the Delivery Period beginning from and after such additional ICOT will be determined by such additional ICOT. For the avoidance of doubt, in no event will such additional ICOT result in a retroactive adjustment of the GU Contract Capacity for such Generating Unit for any period prior to such additional ICOT.

The records from any Retest shall be used to determine Generating Unit performance as of the date of the original Test being repeated.

1. Final Test Report. Within fifteen (15) Business Days after the completion of a Test (including a Retest), Seller shall prepare and submit to SCE a written report of the Test in accordance with Section 6 of PTC 22. At a minimum, the report shall include:

(1) a description of the Final Test Plan;

(2) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;

(3) documentation of the satisfactory completion of the Start-Up and Stabilization period(s);

(4) a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;

(5) the measured Test data**6**;

(6) a verification of the validity of the Test in accordance with Section 3.5 of PTC 22;

(7) supporting calculations for correction of the Generating Unit(s) Test data to the Test Parameters in Section 1.02(d)**6**;

(8) The level of Contract Capacity and each GU Contract Capacity determined by the Test, including supporting calculations6; and

(9) Seller’s statement of either Seller’s acceptance of the Test or Seller’s rejection of the Test results and reason(s) therefore.

Note 6 – Data shall be sumbitted in an electronic format prescribed no later than the first Test Day by SCE

Within ten (10) Business Days after receipt of such report, SCE shall notify Seller in writing of either SCE’s acceptance of the Test results or SCE’s rejection of the Test and reason(s) therefore.

If SCE rejects the results of any Test or Retest, or Seller rejects the results of the first Initial Commercial Operation Test, such Test shall be repeated in accordance with PART II. K.

1. Operating Personnel. During any Test, the same operating personnel shall operate the Generating Unit(s) that Seller contemplates will operate the Generating Unit(s) during the Delivery Period.
2. SCE Representative. SCE shall be entitled to have at least one (1) representative from SCE and one (1) independent third party witness present to witness each Test and shall be allowed unrestricted access to the area from where the plant is being controlled (e.g., plant control room), and unrestricted access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test. SCE shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART III. INITIAL COMMERCIAL OPERATION TEST.

* 1. Test Plan. No less than sixty (60) days prior to the Expected Initial Delivery Date, Seller shall prepare and submit to SCE a proposed procedure and schedule in order to complete the ICOT (“Seller’s Proposed Test Plan”). Such Seller’s Proposed Test Plan must describe, with supporting detail, the actions, processes, protocols, and schedules to comply with all of the requirements in PART II. of this Appendix. Within ten (10) Business Days after SCE’s receipt of Seller’s Proposed Test Plan, SCE shall notify Seller that (i) the Seller’s Proposed Test Plan is accepted, and is now considered the Final Test Plan, or (ii) the Seller’s Proposed Test Plan is not accepted. If SCE does not accept Seller’s Proposed Test Plan, then SCE and Seller shall immediately commence work in good faith to develop the Final Test Plan. If, after thirty (30) days from SCE’s receipt of Seller’s Proposed Test Plan, Seller and SCE have not agreed on a Final Test Plan, SCE shall provide Seller with the Final Test Plan within seven (7) Business Days after the expiration of the thirty (30) day period.

Failure by SCE to provide Seller with written acceptance of any Seller’s Proposed Test Plan shall not constitute acceptance of such Seller’s Proposed Test Plan.

* 1. Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ICOT. Instrumentation shall include all instruments permanently installed and any temporary instruments needed to acquire data for Seller to measure, record and determine the test data required pursuant to Part II.B. and demonstrate compliance with the “Maximum Permissible Standard Deviations” set forth in Part II.D. Within seven (7) Business Days of SCE’s receipt of Seller’s Proposed Test Plan, Seller shall provide SCE with written notice describing the temporary instrumentation required for and to be used during the ICOT. Wherever possible, the instrumentation, metering and data collection equipment used during the ICOT shall be the same used for monitoring and controlling operation of the Generating Unit(s) following the Test.

Seller shall calibrate, or cause to be calibrated, all such instrumentation, metering and data collection equipment, permanent or temporary, no more than ninety (90) days prior to the date of the ICOT. Copies of all calbration records for the aforementioned instruments shall be provided to SCE at no less than seven (7) Business Days prior to the Test. The ICOT will be delayed on a day-for-day basis until such calibration records have been received by SCE.

Whenever possible, data will be accessed through the Generating Unit(s)’ DCS. In addition, Seller shall provide a temporary Data Acquisition System (“DAS”) to monitor, record and measure data acquired by any temporary instruments.

A pre- and post- Test Uncertainty Analysis will be provided by the Seller so as to quantify the impact from changes to the measured parameters necessary for the calculation of Contract Capacity and Heat Rate.

* 1. Test Duration. The ICOT shall take place on no more than three (3) consecutive days unless SCE determines in its sole discretion that more or less time is needed.
  2. Test Dates. Seller shall provide SCE with no less than seven (7) Business Days’ Notice of Seller’s proposed dates for the ICOT. SCE shall confirm the dates in writing, no less than three (3) Business Days prior to the proposed first Test Day.
  3. Costs. The ICOT is a Seller Initiated Test. Seller is responsible for all costs associated with ICOT, and all income is allocated as set forth in Section 7.03 for a Seller Initiated Test.
  4. Determination of Contract Capacity and Heat Rate. Seller shall calculate each initial GU Contract Capacity and Heat Rate by first employing the Generating Unit OEM’s suite of correction curves and/or tables or applicable software to correct the measured Test data from Part II.B. of this Appendix to the applicable Generating Unit’s Test Parameters in Article 1.02(d).

Using the corrected output data, the net kW output at the Energy Delivery Point shall be calculated by averaging the results from each of sixteen (16) consecutive fifteen (15) minute intervals comprising the Contract Capacity Test Element. The average of each of the corrected sixteen (16) net kW values shall be the final GU Contract Capacity for each Generating Unit under Appendix 1.02. The same methodology will apply for correction of the measured Heat Rate.

* 1. Table. Using the manufacturer’s performance curve(s), the GU Contract Capacity as calculated in PART III.F. for a Generating Unit shall be used to generate an “Ambient Generating Unit Output Table” relating expected output of the Generating Unit (in MW) to ambient temperature, such that the GU Contract Capacity for the Generating Unit shall be the expected output of the Generating Unit when Test Conditions are the same as Test Parameters in the Ambient Generating Unit Output Table, and the expected output of the Generating Unit at other ambient temperatures shall relate to GU Contract Capacity in the same proportion as the points on the OEM’s performance curve relate to that curve at Test Conditions. Such table shall be provided to SCE along with the Final Test Report described in PART II.L.

PART IV. CONTRACT CAPACITY & ANCILLARY SERVICES TEST

* 1. Test Plan. The Final Test Plan from the ICOT shall be used for any CCAST, unless the Parties agree otherwise in writing.
  2. Instrumentation and Metering. Seller shall use the same instrumentation and metering as was used in the ICOT, unless the Parties agree otherwise in writing.
  3. Test Duration. Each CCAST shall take place on three (3) consecutive days unless SCE determines in its sole discretion that more or less time is needed.
  4. Test Dates. Seller is responsible for scheduling each CCAST on three (3) consecutive days (unless SCE determines in its sole discretion that more or less time is needed for such Test) that are acceptable to SCE and that fall between June 15 and September 30 of the Contract Year in which the Test is requested. The date of any such Test shall be confirmed in writing by SCE to Seller prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that SCE will or is likely to dispatch the Generating Unit.
  5. Costs. Responsibility for costs and allocation of income for a CCAST shall be as set forth in Section 7.03.
  6. No Adjustment to Contract Capacity. Notwithstanding any other provision in this Agreement, the Contract Capacity shall not be adjusted to conform to the results of any CCAST.
  7. Table. If SCE requests, Seller shall use the results from an CCAST to create an Ambient Generating Unit Output Table relating such capacity (in MW) to ambient temperature, such that the capacity for a Generating Unit shall be the expected output of the Generating Unit when Test Conditions are the same as Test Parameters in the Ambient Generating Unit Output Table, and the expected output of the Generating Unit at other ambient temperatures shall relate to capacity in the same proportion as the points on the OEM’s performance curve(s) relate to such curve(s) at Test Conditions. Such table will be provided to SCE as part of the Final Test report.

**APPENDIX 9.02**

**MONTHLY CAPACITY PRICE AND MONTHLY CAPACITY PAYMENT**

Excel Appendices

**APPENDIX 9.04**

**VARIABLE O&M CHARGE**

Excel Appendices

**APPENDIX 9.05**

**START-UP CHARGE AND TRANSITION COSTS**

Excel Appendices

**APPENDIX 13.03(b)**

**LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY

LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Southern California Edison Company

2244 Walnut Grove Avenue

Risk Control GO#1, Quad 2A

Rosemead, CA 91770

Attn: Manager Credit, Risk & Collateral Management

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 *[CONTRACT PARTY]*, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation, (the “Applicant”), for the amount of XXX AND XX/100 Dollars ($ ) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., California time, on \_\_\_\_\_\_\_\_\_\_\_\_ (the “Expiration Date”).

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

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

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

1. The original or a photocopy of this Letter of Credit and all amendments; 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 full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other number as specified from time-to-time by the Bank.

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

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

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

Banking charges shall be the sole responsibility of the Applicant.

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

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

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

AUTHORIZED SIGNATURE for Issuer

(Name)

Title:

**ATTACHMENT A TO APPENDIX 13.03(b)**

## DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number.

*(Sample Text)*

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable 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 the Resource Adequacy Purchase Agreement (Power Purchase Tolling Option) between Beneficiary and Applicant (the “Agreement”), with respect to the Applicant has occurred and is continuing. Wherefore, the undersigned does hereby demand payment under the Letter of Credit.

[ ]B. An Early Termination Date (as defined in the Agreement) has been set by the Beneficiary under the Agreement. Wherefore, the undersigned does hereby demand payment under the Letter of Credit.

[ ]C. The Letter of Credit will expire in fewer than twenty (20) 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 or Applicant has heretofore provided written notice to the Beneficiary of the Bank’s or Applicant’s intent not to renew the Letter of Credit following the present Expiration Date thereof, and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the notice of non-renewal.

[ ]E. The Beneficiary has not been paid any or all of the Applicant’s payment obligations now due and payable under the Agreement.

[ ]F. Daily Delay Damages (as defined in the Agreement) are now due and payable under the Agreement.

[ ]G. The Beneficiary is entitled to retain the entire Delivery Date Security (as defined in the Agreement): (i) because the Initial Delivery Date (as defined in the Agreement) has not occurred on or before \_\_\_\_\_\_\_\_\_\_\_\_; or (ii) because the Agreement has been terminated due to an Event of Default by Applicant before the Initial Delivery Date.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_\_/100ths (U.S.$ ), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

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

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

Beneficiary: SOUTHERN CALIFORNIA EDISON COMPANY

By:

Name:

Title:

**APPENDIX 16.08**

**HEAT RATE INFORMATION**

Excel Appendices

**APPENDIX 20.01**

**AVAILABILITY NOTICE**

**Availability Notice**

Operating Day:

Station: Issued By:

Unit: Issued At:

Unit 100% Available No Restrictions:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Available Capacity | Minimum Output | AGC Available | AGC Min Limit | AGC Max Limit | Comments |
|  | (MW) | (MW) (non AGC) | YES/NO | (MW) | (MW) |  |
| 1:00 |  |  |  |  |  |  |
| 2:00 |  |  |  |  |  |  |
| 3:00 |  |  |  |  |  |  |
| 4:00 |  |  |  |  |  |  |
| 5:00 |  |  |  |  |  |  |
| 6:00 |  |  |  |  |  |  |
| 7:00 |  |  |  |  |  |  |
| 8:00 |  |  |  |  |  |  |
| 9:00 |  |  |  |  |  |  |
| 10:00 |  |  |  |  |  |  |
| 11:00 |  |  |  |  |  |  |
| 12:00 |  |  |  |  |  |  |
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| 18:00 |  |  |  |  |  |  |
| 19:00 |  |  |  |  |  |  |
| 20:00 |  |  |  |  |  |  |
| 21:00 |  |  |  |  |  |  |
| 22:00 |  |  |  |  |  |  |
| 23:00 |  |  |  |  |  |  |
| 0:00 |  |  |  |  |  |  |

Comments:

**APPENDIX 20.02**

**DISPATCH NOTICES**

**Dispatch Notice**

Operating Day:

Station: Issued By:

Unit: Issued At:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Hour Ending | Scheduled Energy | AGC Scheduled | Regulation Up | Regulation Down | Spinning Reserve | Non-Spinning Reserves | Comments |
|  | (MW) | YES/NO | (MW) | (MW) | (MW) | (MW) |  |
| 1:00 |  |  |  |  |  |  |  |
| 2:00 |  |  |  |  |  |  |  |
| 3:00 |  |  |  |  |  |  |  |
| 4:00 |  |  |  |  |  |  |  |
| 5:00 |  |  |  |  |  |  |  |
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| 7:00 |  |  |  |  |  |  |  |
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| 21:00 |  |  |  |  |  |  |  |
| 22:00 |  |  |  |  |  |  |  |
| 23:00 |  |  |  |  |  |  |  |
| 0:00 |  |  |  |  |  |  |  |

Comments:

**APPENDIX 20.03**

**START-UP NOTICE**

Date

Station Issued By:

Unit Issued At:

Date and Time Fire established in

Applicable Generating Unit

Date and Time Applicable Generating  
Unit Synchronized

Date and Time Applicable  
Generating Unit Released for Dispatch

Fuel Consumed During Start-Up (MMBtu)

**APPENDIX 20.05**

**COMMUNICATIONS PROTOCOLS**

**Communication Protocols**

These Communication Protocols are subject to change and shall be modified as evolving market conditions and rules may require.

**1. Contacts and Authorized Representatives**

The “Contact Information” tables set forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. Notification provided under this Agreement shall be made to the applicable point of contact as set forth in the Contact Information Table. A Party may update its Contact Information by providing Notice to the other Party.

**2. Communication Protocols - General**

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day and intra-hour for the applicable Operating Day including those regarding emergencies Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charges, and **shall be provided electronically or telephonically as SCE directs** to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) \_\_\_\_\_\_\_\_\_\_\_, (2) \_\_\_\_\_\_\_\_\_\_\_, (3) \_\_\_\_\_\_\_\_\_\_\_. If to SCE, such notices and communications shall be provided to the following contact, in order of priority, Real Time and Natural Gas Scheduling. **Each Party shall confirm all Intra-day Communication either electronically or via telephone as soon as practicable.**

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and SCE, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: SCE and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

2.4 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreement and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.5 Staffing: The Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

**Contact Information Table**

**Contacts and Authorized Representatives for SCE**

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by SCE with timely Notice to Seller.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Contact** | **Primary Phone** | **Secondary Phone** | **Fax** | **Email** |
| Day-Ahead  Trading | 626-307-4487 |  | 626-307-4430 | electrade@sce.com |
| Day-Ahead Scheduling | 626-307-4425 | 626-307-4420 | 626-307-4413 | presched@sce.com |
| Gas Trading | 626-307-4480 |  | 626-307-4431 | gastrade@sce.com |
| Gas Scheduling | 626-307-4479 |  | 626-307-4431 | gassched@sce.com |
| Real Time | 626-307-4453 | 626-307-4470 | 626-307-4416 | realtime@sce.com |
| Settlements – Power | 626-302-3277 |  | 626-302-3276 | PPFDPowerSettle@sce.com |
| Settlements –  Gas | 626-302-3277 |  | 626-302-3276 | PPFDGasSettle@sce.com |
| Contract Management | 626-302-3126 |  | 626-302-8168 | EnergyContracts@sce.com |
| Outage Scheduling | 626-302-3400 |  |  | genoutages@SCE.com |

**Contacts and Authorized Representatives for Seller**

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to SCE.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Desk:** | **Contact:** | **Direct  Phone:** | **Secondary Phones:** | **Fax** | **Email:** |
| Dispatch Desk  (Day-Ahead) |  |  |  |  |  |
| Dispatch Desk  (Real Time) |  |  |  |  |  |
| Outage Desk |  |  |  |  |  |
| Plant Manager |  |  |  |  |  |
| Contract Administration |  |  |  |  |  |
| Settlements |  |  |  |  |  |
| Operations Manager |  |  |  |  |  |
| Operations Supervisor |  |  |  |  |  |

**APPENDIX 21.03**

**DELIVERY OF DATA**

The following is a list of real time generic data points to be electronically exchanged between Seller and SCE. SCE may add items to or delete items form this list at its reasonable discretion prior to the Initial Delivery Date.

|  |  |  |
| --- | --- | --- |
| **Point description:** |  |  |
|  |  |  |
| **From Generator** |  | **From GMS Schedules Related (cont.)** |
| DNP - XXX UNIT# Breaker |  | DNP - SCH HA Today XXX UNIT# HE14 |
| DNP - XXX UNIT# AGC CTRL AVAILABILITY ONOFF |  | DNP - SCH HA Today XXX UNIT# HE15 |
| DNP - XXX UNIT# ISO RIG Lost Communication |  | DNP - SCH HA Today XXX UNIT# HE16 |
| DNP - XXX UNIT# High Operating Limit |  | DNP - SCH HA Today XXX UNIT# HE17 |
| DNP - XXX UNIT# Low Operating Limit |  | DNP - SCH HA Today XXX UNIT# HE18 |
| DNP - XXX UNIT# ISO AGC set point |  | DNP - SCH HA Today XXX UNIT# HE19 |
| DNP - XXX UNIT# Net MW (POD) |  | DNP - SCH HA Today XXX UNIT# HE20 |
| DNP - XXX UNIT# Capacity |  | DNP - SCH HA Today XXX UNIT# HE21 |
| DNP - XXX UNIT# Max Sustained Ramp Rate |  | DNP - SCH HA Today XXX UNIT# HE22 |
|  |  | DNP - SCH HA Today XXX UNIT# HE23 |
|  |  | DNP - SCH HA Today XXX UNIT# HE24 |
| **From GMS Control Related** |  | DNP - SCH HA Today XXX UNIT# HE25 |
| DNP - XXX UNIT# AGC model - ISO AGC |  | DNP - SCH HA Tomorrow XXX UNIT# HE01 |
| DNP - XXX UNIT# AGC model - SFM |  | DNP - SCH HA Tomorrow XXX UNIT# HE02 |
| DNP - XXX UNIT# AGC model - MAN |  | DNP - SCH HA Tomorrow XXX UNIT# HE03 |
| DNP - XXX UNIT# AGC model - OFF |  | DNP - SCH HA Tomorrow XXX UNIT# HE04 |
| DNP - XXX UNIT# Dispatch Energy Schedule “GO TO” |  | DNP - SCH HA Tomorrow XXX UNIT# HE05 |
| DNP - XXX UNIT# Reg Up Awarded MW |  | DNP - SCH HA Tomorrow XXX UNIT# HE06 |
| DNP - XXX UNIT# Reg Down Awarded MW |  | DNP - SCH HA Tomorrow XXX UNIT# HE07 |
| DNP - XXX UNIT# Spin Awarded MW |  | DNP - SCH HA Tomorrow XXX UNIT# HE08 |
| DNP - XXX UNIT# Non-Spin Awarded MW |  | DNP - SCH HA Tomorrow XXX UNIT# HE09 |
| DNP - XXX UNIT# Set Point (MW) |  | DNP - SCH HA Tomorrow XXX UNIT# HE10 |
| DNP - XXX UNIT# Ramp Rate (MW/M) |  | DNP - SCH HA Tomorrow XXX UNIT# HE11 |
|  |  | DNP - SCH HA Tomorrow XXX UNIT# HE12 |
|  |  | DNP - SCH HA Tomorrow XXX UNIT# HE13 |
| **From GMS Schedules Related** |  | DNP - SCH HA Tomorrow XXX UNIT# HE14 |
| DNP - SCH HA Today XXX UNIT# HE01 |  | DNP - SCH HA Tomorrow XXX UNIT# HE15 |
| DNP - SCH HA Today XXX UNIT# HE02 |  | DNP - SCH HA Tomorrow XXX UNIT# HE16 |
| DNP - SCH HA Today XXX UNIT# HE03 |  | DNP - SCH HA Tomorrow XXX UNIT# HE17 |
| DNP - SCH HA Today XXX UNIT# HE04 |  | DNP - SCH HA Tomorrow XXX UNIT# HE18 |
| DNP - SCH HA Today XXX UNIT# HE05 |  | DNP - SCH HA Tomorrow XXX UNIT# HE19 |
| DNP - SCH HA Today XXX UNIT# HE06 |  | DNP - SCH HA Tomorrow XXX UNIT# HE20 |
| DNP - SCH HA Today XXX UNIT# HE07 |  | DNP - SCH HA Tomorrow XXX UNIT# HE21 |
| DNP - SCH HA Today XXX UNIT# HE08 |  | DNP - SCH HA Tomorrow XXX UNIT# HE22 |
| DNP - SCH HA Today XXX UNIT# HE09 |  | DNP - SCH HA Tomorrow XXX UNIT# HE23 |
| DNP - SCH HA Today XXX UNIT# HE10 |  | DNP - SCH HA Tomorrow XXX UNIT# HE24 |
| DNP - SCH HA Today XXX UNIT# HE11 |  | DNP - SCH HA Tomorrow XXX UNIT# HE25 |
| DNP - SCH HA Today XXX UNIT# HE12 |  |  |
| DNP - SCH HA Today XXX UNIT# HE13 |  |  |

**APPENDIX 22.01**

**PLANNED OUTAGE REPORT**

Actual Planned Outage Reports submitted under this Agreement should be provided in Excel.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| DATE OF UPDATE | |  | | |
| **RESOURCE NAME** | |  | | |
| Replicate for each Generating Unit | | |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| **Planned Outages** |  |  |  |  |
| **Start Date** | **HE** | **End Date** | **HE** | **MW Available** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**APPENDIX 22.02**

**ANNUAL SCHEDULING/PLANNING CALENDAR FOR 2013**