EEI AGREEMENT
REC CONFIRMATION
BETWEEN
[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]
AND
San diego gas & electric COMPANY

This REC Confirmation ("Confirmation") confirms the renewable energy credit transaction (“Transaction”) between [ ] ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", effective as of [ ], 2011 (the "Confirmation Effective Date"). This Transaction is governed by the EEI Master Power Purchase & Sale Agreement effective as of 4/25/00 (attached hereto as Exhibit A with [TO BE NEGOTIATED: all elections, including credit, confidentiality, and government entity language.](the "EEI Agreement"). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement or in the RPS (as defined below).

COMMERCIAL TERMS

|  |  |
| --- | --- |
| **Seller:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Buyer:** San Diego Gas & Electric Company |
| **Contact Information:** | **Name:**(“Seller”) | **Name:** San Diego Gas & Electric Company (“Buyer”) |
|  | **All Notices:**Attn: Contract Administration Phone: Facsimile: Duns: Federal Tax ID Number:  | **All Notices:**San Diego Gas & Electric CompanyStreet: 8315 Century Park Court City: San Diego, CA Zip: 92123Attn: Electric & Fuel Procurement Contract AdministrationPhone: (858) 650-6176Facsimile: (858) 650-6190Duns: 006911457Federal Tax ID Number: 95-1184800 |
|  | **Invoices:**    Attn: Phone: Facsimile:  | **Invoices:**San Diego Gas & Electric Company8315 Century Park Ct.San Diego, California 92123-1593Attn: Energy Accounting ManagerPhone: (858) 650-6177Facsimile: (858) 650-6190 |
|  | **Scheduling:**   Attn: Phone: Facsimile:  | **Scheduling:**San Diego Gas & Electric Company8315 Century Park Ct.San Diego, California 92123-1593Attn: Transaction Scheduling ManagerPhone: (858) 650-6160Facsimile: (858) 650-6191 |
|  | **Payments:**    Attn: Phone: Facsimile:  | **Payments:**San Diego Gas & Electric CompanyPO Box 25110Santa Ana, CA 92799-5110Attn: Mail PaymentsPhone: (619) 696-4521Facsimile: (619) 696-4899 |
|  | **Wire Transfer:**BNK: ABA: ACCT: Confirmation: FAX:  | **Wire Transfer:**BNK: Union Bank of Californiafor: San Diego Gas & Electric CompanyABA: Routing # 122000496ACCT: #4430000352Confirmation: SDG&E, Major MarketsFAX:(213) 244-8316  |
|  | **Credit and Collections:**   Attn: Phone: Facsimile:  | **Credit and Collections:**San Diego Gas & Electric Company, Major Markets555 W. Fifth Street, ML 10E3Los Angeles, CA 90013-1011Attn.: Major Markets, Credit and Collections ManagerFax No.: (213) 244-8316Phone: (213) 244-4343 |
|  | **Defaults:** With additional Notices of an Event of Default or Potential Event of Default to:   Attn: Phone: Facsimile:  | **Defaults:** With additional Notices of an Event of Default or Potential Event of Default to:San Diego Gas & Electric Company8330 Century Park Ct.San Diego, California 92123Attn: General CounselPhone: (858) 650-6141Facsimile: (858) 650-6106 |
| **Product:** | All California RPS-eligible RECs associated with the Contract Quantity and Green Attributes from the Project for the applicable Product Vintage. The obligation of Seller to deliver the Product exclusively to Buyer, for each of the applicable Product Vintage years, is as follows:**Obligation:** (***Check One***):□ Resource Contingent□ Firm |
| **Contract Quantity:** | [[ ] MWh REC per month for all months of the Vintage specified herein.] [All RECs associated with [the entire output of the Project/[\_\_%] of the output from the project] for all months of the Vintage specified herein.]

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | mm/yy | mm/yy | mm/yy | mm/yy | Total |
| # RECs |  |  |  |  |  |

 |
| **Contract Price:** | [$[ ]/MWh REC] |
| **Product****Vintage:** | \_\_\_\_\_\_\_\_\_\_\_\_\_  |
| **Project:** | **Name of Facility:** **Location:** **EIA Number:** **CEC ID:** **WREGIS ID:** **Certification Date:** **On-line Date:** [For Pooled Facilities (for use only with Firm Product): All Product sold hereunder shall be from one or more of the *[type of generation]* facilities listed below:

|  |  |  |
| --- | --- | --- |
|  | **Name of Facility: [ ]** | **Name of Facility: [ ]** |
| **Location:** |  |  |
| **EIA Number:** |  |  |
| **CEC ID:** |  |  |
| **WREGIS ID:** |  |  |
| **Certification Date:** |  |  |
| **On-line Date:** |  |  |

(collectively, the “Pooled Facilities”)The Parties acknowledge and agree that the Project consists of the Pooled Facilities and Seller is permitted to utilize the Pooled Facilities in order to satisfy its obligations hereunder. The Parties further acknowledge and agree that, with respect to Section 3.1(a) of this Confirmation, Product shall solely be limited to the actual Product generated and delivered by the Pooled Facilities used to satisfy the Contract Quantity, and that Buyer is not entitled to any additional Product produced by the Pooled Facilities in the Project above and beyond the Contract Quantity. Each of the Pooled Facilities shall have been certified by the CEC as an RPS-eligible resource and Seller shall have obtained LORS Certification for each of the Pooled Facilities.] |
| **Renewable Energy Source:** | \_\_\_\_\_\_\_\_\_\_\_\_\_  |
| **Term:** | The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period and (ii) the satisfaction of all obligations of the Parties under this Agreement. |
| **Delivery Period:**  | The Delivery Period of this Transaction shall commence on [ ], 20[ ] and shall continue until [delivery by Seller to Buyer of the Product has been completed/[ ], 20[ ]]. |
| **Delivery Point:** | Buyer’s WREGIS account: SDG&E Account ID: 39 |
| **Conditions:** | The commencement of the Delivery Period shall be contingent upon satisfaction of the condition (the “Condition”) that the Buyer obtain CPUC Approval of this Confirmation and the requested relief contained in the related advice letter filing. Both Parties shall take all reasonable action to satisfy this Condition. Either Party has the right to terminate this Agreement on notice, which will be effective five (5) Business Days after such notice is given, if the Condition has not been satisfied or waived by Buyer in its sole discretion within [ ] days after Buyer files its request for CPUC Approval and a notice of termination is given on or before the [ ] day after Buyer files the request for CPUC Approval.In the event of a termination under this section, neither Party shall be liable for any Termination Payment and Article 5 of the EEI Agreement shall not apply. |

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# **ARTICLE 2**

DEFINITIONS

“Accepted Electrical Practices” means (a) those practices, methods, applicable codes, and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or (b) in the absence of such practices, methods, applicable codes, and acts, any of the practices, methods, and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety, and expedition. Acceptable Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of other, but rather refers to a spectrum of practices, methods, and acts generally accepted, or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

"CPUC" means the California Public Utilities Commission or its regulatory successor.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) Finds that any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“Delivered” or “Delivery” or “Deliver” means the transfer from Seller to Buyer of the Contract Quantity of the Product in accordance with the California RPS Program, including its regulations and procedures, necessary for recognition by WREGIS of the transfer to Buyer, or Seller’s delivery to Buyer of a WREGIS Certificate.

“Delivery Date” means the date or dates on which the Product is Delivered pursuant to this Confirmation.

“Delivery Term” means “Delivery Period”.

“Firm” means Seller has agreed to sell and Deliver, and Buyer has agreed to buy and receive the Contract Quantity of the Product during the Delivery Period consistent with the terms of this Confirmation without excuse for non-Delivery by Seller except for Force Majeure, and as such, if Seller fails to Deliver the Product for any reason other than for Force Majeure, then Seller shall be the non-performing Party as set forth in Section 4.1 of the EEI Agreement and Buyer shall be the performing Party and shall be entitled to receive from Seller an amount determined pursuant to Section 4.1 of the EEI Agreement.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

(1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;

(2) Any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;[[1]](#footnote-1)

(3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Buyer to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Buyer’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include:

(i) Any energy, capacity, reliability or other power attributes from the Project,

(ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) Fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

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

“LORS Certification” means certification by the CEC of an electric generation facility not located within the state of California that such facility meets California’s environmental quality laws, ordinances, regulations, and standards as set forth in the CEC’s RPS Eligibility Guidebook.

“Renewable Energy Credit” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 10-03-021, as modified by CPUC Decision 11-01-025 and as may be amended from time to time or as further defined or supplemented by law.

“Renewable Energy Facility” means an electric generation unit or other facility or installation that produces electric energy using a Renewable Energy Source.

“Renewable Energy Source” means an energy source that is not fossil carbon-based, non-renewable or radioactive, and may include solar, wind, biomass, geothermal, landfill gas or wave, tidal and thermal ocean technologies.

“Reporting Year” means a twelve-month compliance period specified under WREGIS.

“Resource Contingent” means that Seller is obligated to Deliver the Product to the extent that the applicable Renewable Energy Source supports energy production by the applicable Renewable Energy Facility, subject to Force Majeure, curtailment ordered directly or indirectly from the CAISO, and the planned or forced outage of the Renewable Energy Facility (which is not the result of Seller’s negligence or willful misconduct), [***Insert the following provision if SDG&E is not purchasing 100% of the output:*** and further subject to Seller’s obligation to allocate the production among all of its purchasers of Product from the Renewable Energy Facility during the Vintage [as follows: [insert].] If Seller otherwise fails to Deliver the Product, then Seller shall be the non-performing Party as set forth in Section 4,1 of the EEI Agreement and Buyer shall be the performing Party and shall be entitled to receive from Seller an amount determined pursuant to Section 4.1 of the EEI Agreement.

“RPS” means the California Renewables Portfolio Standard Program as codified at California Public Utilities Code Section 399.11 *et seq.*, and any decisions by the CPUC related thereto.

“Vintage” means the calendar year, Reporting Year or other period specified by the Parties or WREGIS in which the Product is created or first valid for use under the RPS.

 “WREGIS” means the Western Renewable Energy Generation Information System or its successor organization recognized under applicable laws for the registration or recordation of Delivery, ownership or transfer of RECs.

"WREGIS Certificate" means **"**Certificate**"** as defined by WREGIS in the WREGIS Operating Rules.

"WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

# **ARTICLE 3**

conveyance of renewable ATTRIBUTES

## 3.1 Seller’s Conveyance of Contract Quantity of the Product and Green Attributes

### (a) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

### (b) For each month of the Delivery Period, Seller shall deliver and convey the Contract Quantity of the Product and the Green Attributes pursuant to this Article 3 within five (5) Business Days after the end of the month in which the WREGIS Certificates for such Contract Quantity of the Product and the Green Attributes are created by properly transferring such WREGIS Certificates, in accordance with WREGIS Operating Rules, equivalent to Contract Quantity of the Product and the quantity of such Green Attributes, to Buyer into Buyer’s WREGIS account such that all right, title and interest in and to such WREGIS Certificates shall transfer from Seller to Buyer.

## 3.2 WREGIS Registration

During the Term, Seller, at its own cost and expense, shall maintain its registration of the Project with WREGIS and shall use commercially reasonable efforts to ensure that the Contract Quantity of the Product and all Green Attributes transferred to Buyer under this Confirmation count towards Buyer’s RPS requirements. The Project shall be certified by the CEC as an RPS-eligible resource and the Contract Quantity of the Product and all Green Attributes transferred by Seller hereunder shall be designated California RPS-compliant with WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of the Contract Quantity of the Product and the Green Attributes to Buyer in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

### **3.3 Cooperation on Delivery; Review of Records; and Audit Rights**

(a) Upon either Party’s receipt of notice from WREGIS that the transfer of any portion of the Product pursuant to this Confirmation will not be recognized, that Party will immediately so notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and the Delivery Obligation to be met. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to perform the functions necessary pursuant to this Confirmation and to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party. If any fact, statement, charge or computation contained any inaccuracy, the necessary adjustments and any resulting payments will be made within 30 calendar days after the notification date, and the payments will bear interest at the Interest Rate from the date the overpayment or underpayment was made until paid.

1. If Seller is not the owner or operator of the Project, Seller will cooperate with Buyer in any efforts to review the records of the original seller of such Product.

The obligations set forth in this Section shall terminate with respect to this Transaction on the later of 30 days following the last banking date under WREGIS for the Vintage of the Product Delivered, or the third anniversary of the Delivery Date.

 (c) In addition to any audit rights that Buyer may have under the EEI Agreement, Seller shall, along with the initial invoice sent to Buyer by Seller under this Confirmation for any calendar year during the Term and at other times as may be requested by Buyer, provide documentation, including, but not limited to, meter data as recorded by a meter approved by the CAISO, sufficient to demonstrate that the Product has been conveyed and delivered, subject to the terms of this Confirmation, to Buyer. [***NOTE: CAISO meters may not be required for certain projects.]***

(d) Seller shall, at its own cost and expense, instruct WREGIS to provide Buyer with a WREGIS produced report of the generation activity from the Project following each month that the Project generates energy that is being used to Deliver the Product. Such information shall be limited to the amount of electric energy generated by the Project during the Term, and shall not include any information or reference to the transfer of WREGIS Certificates from Seller’s account to any other entity.

# **article 4**

CPUC filing and APproval

Buyer shall file with the CPUC the appropriate request for CPUC Approval of this Confirmation. Buyer shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Confirmation or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

#

# **article 5**

CREDIT AND COLLATERAL

**5.1 General Provisions**

[Both Parties agree that Sections 8.1(b) and 8.2(b) of the EEI Agreement shall not apply to this Confirmation. 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. ][Credit terms will follow the policy outlined in Section 12 of the RFO.]

## 5.2 Seller Collateral Requirements

## [Credit terms will follow the policy outlined in Section 12 of the RFO.]

# **article 6**

REPRESENTATIONS, WARRANTIES AND COVENANTS

**6.1 Seller’s Representation, Warranties, and Covenants**

 (a) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(b) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means this Agreement.

(c) In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Term that:

1. Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
2. Seller has not sold the Product to be delivered under this Confirmation to any other person or entity;
3. at the time of Delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever; and
4. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

**6.2 Seller’s Representation, Warranties, and Covenants Related to the Project**

Seller warrants, represents and covenants that:

(a) Seller will inspect, maintain, repair and operate the Project in accordance with applicable industry standards, the Project’s permit requirements, and Accepted Electrical Practices; and

(b) Seller will abide by all applicable laws in operating the Project.

article 7

Payment

For purposes of Article 6 of the EEI Agreement, Seller shall invoice Buyer for the payment amount calculated as: (a) the Contract Price multiplied by (b) the Contract Quantity of the applicable Product specified herein. Buyer shall remit payment for the full amount on the thirtieth day of the calendar month following the month in which Buyer has verified the transfer and Delivery of the Product.

article 8

AMENDMENTS TO EEI AGREEMENT

**8.1** **Force Majeure**

Notwithstanding Section 3.3 of the EEI Agreement to the contrary, Buyer and Seller agree that any failure by Seller to deliver the Product pursuant to this Confirmation due to any Force Majeure shall be deemed to be a failure by Seller to perform such delivery obligation if such failure continues for a period of [ninety (90) days] or more after the time such delivery was due to be made. Otherwise, the terms of Section 3.3 of the EEI Agreement shall apply to this Confirmation. Force Majeure may include the failure or disruption in Deliveries by WREGIS that is not the fault of the Party asserting the Force Majeure.”.

**8.2 Governing Law/Waiver of Jury Trial/Venue**

For purposes of this Confirmation, Section 10.6, Governing Law,of the EEI Agreement is amended by replacing the Section in its entirety with the following:

“GOVERNING LAW/WAIVER OF JURY TRIAL/VENUE. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. In the event of any litigation to enforce or interpret any terms of this Agreement, the parties agree that such action will be brought in the Superior Court of the County of San Diego, California (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.”

**8.3 Confidentiality** Section 10.11, Confidentiality, of the EEI Agreement is amended by deleting Section 10.11 in its entirety and inserting the following:

### “10.11(a) Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party’s Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer’s Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.11(b) of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11(a) (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

### 10.11(b) RPS Confidentiality. Notwithstanding Section 10.11(a) of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Quantity, and Delivery Point.”

article 9

GENERAL PROVISIONS

**9.1 Prevailing Wage**

To the extent applicable, Seller shall comply with the prevailing wage requirements of Public Utilities Code Section 339.14, subdivision (h).

## 9.2 Facility Identification [If Project consists of Pooled Facilities]

Within five (5) Business Days after the end of each month during the Delivery Period, Seller shall (a) identify the facility(s) from the Pooled Facility that the Product was delivered from for that month; (b) provide estimates of the quantity of Product that will be provided in the next month and the facility(s) from which it will be provided.

# **ARTICLE 10**

# **TERMINATION**

# Notwithstanding anything to the contrary in the EEI Agreement, including Section 7.1, the Parties shall determine the Termination Payment for this Transaction in accordance with Section 5 of the EEI Agreement. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2:

“If Buyer is the Non-Defaulting party and Buyer reasonably expects to incur penalties or fines from the CPUC, the California ISO or any other governmental entity for failure to meet RPS requirements due to Seller’s Event of Default, then Buyer 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. The rights and obligations with respect to determining and paying any Termination Payment and any dispute resolution with respect thereto, shall survive termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

# **Article 11**

ADDITIONAL EVENTS OF DEFAULT

It shall constitute an Event of Default as to Seller under Section 5.1 of the EEI Agreement if:

(a) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, or any benefits derived therefrom, to any party other than the Buyer; or

(b) Seller or the Project owner fails to maintain CEC Certification or LORS Certification, as applicable, for the Project from the CEC.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

By: By:
Name: Name:
Title: Title:

Exhibit A

[attach EEI]

1. Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program. [↑](#footnote-ref-1)