
California AB32 Product Annex to the EEI Master Power Purchase & Sale Agreement

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INTRODUCTION AND EXPLANATORY NOTES

Introduction. This Introduction and these Explanatory Notes concern the California AB32 Product Annex to the Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (the “EEI AB32 Annex” or the “Annex”). The Annex is for use with the EEI Master Power Purchase & Sale Agreement. The following notes explain certain selected concepts. They are intended to educate users, and are not part of the document itself, and do not create legal obligations between the Parties.

Program Implementation. The Annex is intended for use in trading AB32 cap and trade compliance products. Although at the time of publication of the Annex, the AB32 cap and trade program, including the California Air Resources Board (“CARB”) accounting system, is not yet fully operational, the body of the Annex contemplates a program that is in full force and effect. Therefore, Exhibit A-1 is a form of transaction confirmation that may be used before the program begins, and it contains provisions relating to change in law and similar concepts that are likely to be applicable before, but not after, the program commences. Once the program is fully underway, Exhibit A-1 should no longer be necessary.

Early Action Offset Credits. The Offset Credits that may be traded under the Annex are intended to be issued by CARB pursuant to the Cap and Trade Regulations. At present, implementation, planning, roles, tracking system, and other issues remain outstanding with respect to changing existing early action offset credits (for example Climate Action Reserve (“CAR”) Climate Reserve Tonnes (“CRTs”)) into CARB offset credits, even if the path to conversion is indeed set forth in the rules. Consistent with the drafting philosophy of creating an Annex written for the long haul, as opposed to seeking to address issues likely to be present only at the commencement of the program, Exhibit A-2 is a form of offset confirmation that may be useful for Parties wishing simply to trade CAR CRTs.

Change in Law Risks.

Government Action and Program Interim Suspension. “Government Action” is action by a Governmental Authority that renders the mechanism for Delivery in any AB32 Transaction illegal, unconstitutional, unenforceable or impossible, such that neither Party can fulfill its obligations to purchase, sell or transfer AB32 Products. Government Action that is final and non-appealable allows for Cancellation of the applicable AB32 Transaction by either Party to the AB32 Transaction. Government Action that remains subject to likely appeal or further process is a “Program Interim Suspension”. A Program Interim Suspension allows for Cancellation by either Party if the appeal or further process of the Government Action is not resolved within a Commercially Reasonable Period. The Parties can define the length of a Commercially Reasonable Period. If the Program Interim Suspension is resolved within a Commercially Reasonable Period, the Parties remain obligated to perform in good faith under the terms of the AB32 Transaction. Parties may also wish to consider the impact of a Program Interim Suspension on their obligations under Article 8 of the Master Agreement.

Regulatorily Continuing. If action by a Governmental Authority renders performance of an AB32 Transaction more difficult, time-consuming or costly, but does not render the mechanism for Delivery in such AB32 Transaction illegal, unconstitutional, unenforceable or

impossible, then the action is not Government Action. Action by a Governmental Authority does not constitute Government Action, does not give either Party to the affected AB32 Transaction a right of Cancellation, and the Parties are obligated to continue to perform the AB32 Transaction. The risks of the action are instead allocated to one Party or the other on the basis of whether the transaction is “Regulatorily Continuing”. If the Parties designate the AB32 Transaction as Regulatorily Continuing, the seller has the obligation to ensure that the AB32 Transaction complies with the requirements of AB32 on the Delivery Date, including, if necessary, providing a replacement product. If the Parties do not designate the AB32 Transaction as Regulatorily Continuing, then the risk that the AB32 Product may fail to comply with the requirements of AB32 on the Delivery Date is borne by the Buyer so long as it complied with AB32 as of the Trade Date. If the Parties fail to elect whether the AB32 Transaction is Regulatorily Continuing, it will, by default, be Regulatorily Continuing. This is the opposite of the EEI RECs Annex, where the result of a failure to make an election is that the RECs Transaction is not Regulatorily Continuing. RECs are created by the physical action of a generation station at a point in time, and exist independently of regulation, even if they may have characteristics and uses assigned to them by regulators. By contrast, allowances, which are expected to be the most common AB32 Products, are created and initially distributed by a regulator. In an AB32 Transaction, presence or absence of the “Regulatorily Continuing” designation does not give either Buyer or Seller the right to cancel the Transaction if the program changes and the AB32 Product thus fails to comply on the Delivery Date. Rather, whether the transaction is “Regulatorily Continuing” determines which Party bears the risk of taking measures that are required to ensure that Delivery can be used for compliance with AB32.

Risks. Because the AB32 cap and trade system is the product of an administrative rule, which is subject to judicial review as well as “adjustments” by the California legislature or Congress or a federal agency, Parties should carefully assess their change in law risks.

Usage with Other Annexes.

If parties have both the RECs Annex and the EEI AB32 Annex in place, AB32 will likely prohibit a sale of RECs that is separate from the sale of energy from a resource that is a “Specified Source” within the meaning of AB32, and therefore may wish to include all of the RECs from an energy sale from the Specified Source, as such a sale of electricity would generally not, for example, currently include Allowances or offset credits.

Users of the Annex should also be careful with respect to language and terms of art used in supplemental provisions they may have added to their base EEI Agreement, such as market disruption event language, or provisions respecting options. Even when consistent, the terms can create ambiguities when used in combination with the Annex.

Parties should also refer in their Annex to any provisions of their EEI Master Agreement Cover Sheet and optional provisions that they may wish to not govern AB32 Transactions, for example Mobile-Sierra waivers.

CALIFORNIA AB32 PRODUCT ANNEX
to the
EEI MASTER POWER PURCHASE & SALE AGREEMENT

Name: _____, a _____ organized under the laws of the State of _____ (“Party A”) **Name:** _____, a _____ organized under the laws of the State of _____ (“Party B”)

Effective Date of EEI Master Agreement between Party A and Party B: _____
Effective Date of this Annex: _____

Annex Cover Sheet Elections:

Party A Holding Account details: _____ Party B Holding Account details: _____

The addresses and contacts for notices, invoices, confirmations, payments, and wire transfer are as set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Additional Notices:

Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

Additional Notices:

Street: _____
City: _____
Attn: _____
Phone: _____
Facsimile: _____

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Invoices:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:

Attn: _____
Phone: _____
Facsimile: _____

Confirmations:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

Outstanding AB32 Transactions. This Annex applies to the following pre-existing AB32 Transactions:

- Option A: All AB32 Transactions outstanding between the parties as of the Effective Date of this Annex. If no options are selected, Option A applies.
- Option B: The AB32 Transactions listed in Schedule 1 to this Annex only.
- Option C: None of the AB32 Transactions between the Parties that were executed prior to the Effective Date of this Annex.

Applicability of Articles 8.1, 8.2, and, if applicable, the Collateral Annex

- Option A: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all AB32 Transactions. – If no options are selected, Option A applies.
- Option B: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, do not apply to any AB32 Transactions.
- Option C: Articles 8.1, 8.2 and, if applicable, the Collateral Annex, apply to all AB32 Transactions except those AB32 Transactions set forth in Schedule 2 as amended from time to time.

Elections for Paragraph 3.2 Payment Netting

- Option A (Payment Netting). If neither Option A nor Option B is checked, Option A applies.
- Option B (No Payment Netting).

Elections for Paragraph 7.1 Government Action

“Commercially Reasonable Period” means a period not to exceed __ days (thirty days if left blank).

Other Changes:

Specify, if any:

IN WITNESS WHEREOF, the Parties have caused this Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the Effective Date of this Annex. The Parties expressly acknowledge the validity of facsimile counterparts of this Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

Party A: _____

Party B: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

CALIFORNIA AB32 PRODUCT ANNEX
TO THE EEI MASTER POWER
PURCHASE & SALE AGREEMENT

WHEREAS, Party A and Party B have entered into an EEI Master Power Purchase & Sale Agreement (including any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy and other products related thereto; and

WHEREAS, the Parties desire to enter into this California AB32 Product Annex to the EEI Master Agreement (this “Annex”) to provide terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of AB32 Products (as hereinafter defined; each such Transaction, an “AB32 Transaction”);

NOW, THEREFORE, the Parties agree as follows:

PARAGRAPH ONE: GENERAL TERMS

1.1 Scope of Agreement. The Parties enter into this Annex to provide the terms and conditions pursuant to which they may enter into AB32 Transactions. This Annex and the Annex Cover Sheet Elections (“Annex Cover Sheet”) supplement, form a part of, and are incorporated into, the EEI Master Agreement. Capitalized terms used but not defined in this Annex are defined in the EEI Master Agreement.

1.2 Application. The terms set forth in the EEI Master Agreement as supplemented and amended by this Annex apply to AB32 Transactions. Unless otherwise expressly amended by this Annex, all of the terms and conditions set forth in the EEI Master Agreement apply to AB32 Transactions. “Transaction” as used in the EEI Master Agreement includes AB32 Products. Except as otherwise provided in this Annex, the EEI Master Agreement shall apply equally to all Transactions without differentiation. By way of example only, an Event of Default under Section 5.1 of the EEI Master Agreement gives the Non-Defaulting Party the rights under Article Five of the EEI Master Agreement with respect to all Transactions. In the event of any inconsistency among or between the EEI Master Agreement and this Annex, this Annex will govern with respect to AB32 Transactions only.

PARAGRAPH TWO: DEFINITIONS

2.1 Definitions. With respect to AB32 Transactions, the following terms have the meanings below, and if the same term is defined in the EEI Master Agreement, the definition herein supersedes and replaces that in the EEI Master Agreement:

2.1.1 “AB32” means the California Global Warming Solutions Act of 2006 and the Cap and Trade Regulations, and, with respect to any AB32 Transaction that is Regulatorily Continuing, as each may be amended from time to time.

2.1.2 “AB32 Product” means the Allowance, Offset Credit, Early Action Offset Credit or Sector-Based Offset Credit to be delivered in a particular AB32 Transaction.

2.1.3 “AB32 Transaction” is defined in the Preamble.

2.1.4 “Allowance” means California GHG Allowances, as such term is defined in the Cap and Trade Regulations, and excludes Offset Credits and Sector Based Offset Credits.

2.1.5 “Annex Cover Sheet” is defined in Paragraph 1.1.

2.1.6 “Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to AB32 or any one or both of the Parties or the terms hereof.

2.1.7 “Auction” is defined in the Cap and Trade Regulations.

2.1.8 “Cal EPA” means the California Environmental Protection Agency.

2.1.9 “Cancellation” is defined in Paragraph 7.1.1 of this Annex.

2.1.10 “Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (CCR Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by CARB pursuant to the California Global Warming Solutions Act of 2006.

2.1.11 “CAR” means the Climate Action Registry.

2.1.12 “CARB” means the California Air Resources Board.

2.1.13 “Carbon dioxide equivalent” or “CO₂e” means the number of metric tons of CO₂ emissions with the same global warming potential as one metric ton of another Greenhouse Gas.

2.1.14 “CCR” means California Code of Regulations.

2.1.15 “CEC” means the California Energy Commission.

2.1.16 “Climate Reserve Tonnes” or “CRTs” means a climate reserve tonne that has been issued by CAR and that meets all of the requirements of and has been certified and verified in accordance with the applicable Protocol and includes any and all Emissions Rights.

2.1.17 “Commercially Reasonable Period” is defined on the Annex Cover Sheet.

2.1.18 “Compliance Offset Protocol” is defined in the Cap and Trade Regulations.

2.1.19 “Confirmation” is a document in the form of one of Exhibits A through A-2 hereto, or as otherwise agreed by the Parties, specifying the terms of an AB32 Transaction.

2.1.20 “CPUC” means the California Public Utilities Commission.

2.1.21 “Delivered” or “Delivery” means the transfer by Seller to Buyer of the Quantity of the AB32 Product to the Delivery Point in accordance with AB32.

2.1.22 “Delivery Date” means the date specified in the AB32 Transaction by which Seller shall Deliver AB32 Product to the Buyer.

2.1.23 “Delivery Point” is Buyer’s Holding Account unless otherwise specified in the AB32 Confirmation.

2.1.24 “Early Action Offset Credit” is defined in the Cap and Trade Regulations.

2.1.25 “Early Action Offset Program” is defined in the Cap and Trade Regulations.

2.1.26 “Emission Rights” means any present or future right, interest, claim, credit, entitlement, benefit or allowance to emit present or future gases arising from, resulting from or in connection with any AB32 Product and includes any right that may be created under any present or future Applicable Law.

2.1.27 “Government Action” means for any particular AB32 Transaction an action by a Governmental Authority that is not a Party that renders Delivery or Receipt illegal, unconstitutional, unenforceable or impossible, including repeal of AB32 or the issuance by a Governmental Authority of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Registry, AB32 or the legal ability of CARB to implement or enforce AB32, other than a sanction or penalty imposed specifically on a Party for the failure to comply with AB32, such that either Party cannot fulfill its obligations hereunder to Deliver or Receive AB32 Product, unless that part of AB32 that pertains to the AB32 Product has been replaced and superseded materially in its entirety with a compliance obligation for which the AB32 Product and its Delivery and Receipt is permitted pursuant to Applicable Law to be used for compliance therewith. Government Action specifically excludes an action of a court having jurisdiction over the bankruptcy of a Party.

2.1.28 “Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Law and includes any department, commission, bureau, board, administrative agency or regulatory body of any government and includes FERC, the Cal EPA, CARB, CEC and CPUC.

2.1.29 “Greenhouse Gas” or “GHG” is defined in the Cap and Trade Regulations.

2.1.30 “Holding Account” means the account in the Registry that an entity receives when it registers with CARB or the appropriate Governmental Authority pursuant to the Cap and Trade Regulations.

2.1.31 “Offset Credit” means an offset credit issued by CARB pursuant to the Cap and Trade Regulations or by a program approved by CARB pursuant to Cap-and-Trade Regulations and that qualifies for compliance use on each Delivery Date and otherwise meets all

requirements of the Cap and Trade Regulations and other applicable regulations and, if the AB32 Transaction is Regulatorily Continuing, as each may be amended from time to time.

2.1.32 “Offset Credit Registry” means (i) CARB or (ii) an Offset Credit Project Registry approved by CARB specified in the AB32 Transaction.

2.1.33 “Penalties” means, with respect to the performing Party, the present value of any alternative compliance payments, penalties, fines or fees imposed or assessed against the performing Party by CARB or Governmental Authority under AB32 on account of Delivery and Receipt not occurring on the Delivery Date, as determined by the performing Party in a commercially reasonable manner; provided that any of the same that are imposed or assessed against the performing Party due to the performing Party’s pre-existing adverse compliance record shall not be included in such determination, and provided further that performing Party shall, redacted to comply with any obligations of confidentiality, provide a statement of calculation fairly allocating such amounts if the same are imposed or assessed due to the failure of other persons or entities in addition to the failure of the non-performing Party.

2.1.34 “Project” means an Offset Project as defined by the Cap and Trade Regulations in the case of Offset Credits, a sector based crediting program project in the case of Sector-Based Offset Credits, an Early Action Offset Project in the case of Early Action Offset Credits, and a project registered with the Offset Project Registry in the case of Registry Offset Credits as defined by the Cap and Trade Regulations.

2.1.35 “Program Interim Suspension” means Government Action reasonably expected to be the subject of appeal or further process.

2.1.36 “Quantitative Usage Limit” is defined in the Cap and Trade Regulations.

2.1.37 “Receipt” means Buyer’s receipt of the transfer by Seller to Buyer of the Quantity of the AB32 Product to the Delivery Point in accordance with AB32.

2.1.38 “Registry” means the Compliance Instrument Tracking System Service or other system acceptable to both CARB for compliance with AB32 and to Buyer.

2.1.39 “Regulatorily Continuing” means the AB32 Product complies with AB32 as of the Delivery Date.

2.1.40 “Replacement Offset Credits” means Offset Credits generated by any Project meeting CARB requirements and having the same Vintage and pursuant to the same Compliance Offset Protocol as the Offset Credits in the AB32 Transaction.

2.1.41 “Replacement Price” means (i) the price at which Buyer, acting in a commercially reasonable manner, purchases, as a replacement for any AB32 Product specified in the AB32 Transaction but not Delivered by Seller, AB32 Product complying with the terms of the AB32 Transaction as of the Delivery Date and having the same Vintage as the AB32 Product not Delivered, plus Costs reasonably incurred by Buyer in purchasing such replacement AB32 Product, or (ii) absent a purchase, (A) the market price for such AB32 Product not Delivered, as determined by Buyer in a commercially reasonable manner, or if elected in the Confirmation by

the Parties, (B) Penalties; provided, however, that in no event shall Buyer be required to change its utilization of its market positions to minimize Seller's liability.

2.1.42 "Sales Price" means (i) the price at which Seller, acting in a commercially reasonable manner, resells any AB32 Product not received by Buyer deducting from such proceeds any Costs reasonably incurred by Seller in reselling such AB32 Product and Delivering such AB32 Product to a third party purchaser thereof, or (ii) absent a sale, the market price for such AB32 Product complying with the terms of the AB32 Transaction as of the Delivery Date and having the same Vintage as the AB32 Product not received, as determined by Seller in a commercially reasonable manner; provided, however, that in no event shall Seller be required to change its utilization of its market positions to minimize Buyer's liability; and provided further that if Seller is unable after using commercially reasonable efforts to obtain a market price or resell all or a portion of the AB32 Product not received by Buyer, then the Sales Price with respect to such unsold AB32 Product shall be deemed equal to zero dollars (\$0).

2.1.43 "Sector-Based Offset Credit" is defined in the Cap and Trade Regulations.

2.1.44 "Trade Date" means the date an AB32 Transaction is entered into by the Parties.

2.1.45 "Verifier" is defined in the Cap and Trade Regulations.

2.1.46 "Vintage" means a twelve-month compliance period specified under AB32, in which the AB32 Product is created or first valid for use under AB32.

2.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (i) the singular includes the plural and vice versa; (ii) all references to a particular entity include a reference to such entity's successors and permitted assigns; (iii) all references to a particular market price index or publication include a reference to such index's or publication's successors, so long as doing so will not be contrary to either (A) the intentions of the Parties set forth in a provision of the EEI Master Agreement respecting market disruption language for Transactions with index-based pricing or (B) Applicable Law and (iv) a reference to a statute or to a regulation issued by a Governmental Authority means the statute or regulation in force as of the Trade Date, and in the case of an A32 Transaction that is Regulatorily Continuing, also as of the Delivery Date; and (v) the word "or" is not necessarily exclusive.

PARAGRAPH THREE: AMENDMENTS TO THE EEI MASTER AGREEMENT

3.1 Obligations and Deliveries. Sections 1.33, 2.4, 3.2 and 6.8 of the EEI Master Agreement shall not apply to AB32 Products or AB32 Transactions. Government Action is not a Regulatory Event within the meaning of Section 10.8 of the EEI Master Agreement.

3.2 Payment Netting.

Option A: Payment Netting with Payment for Power and AB32 Transactions on the same payment date. Section 6.2 of the EEI Master Agreement shall apply to AB32 Products, it being the intent of the Parties that monthly payments for other Transactions shall be netted with monthly payments for AB32 Products, all in accordance with Article 6 of the EEI Master

Agreement, including Section 6.4 thereof. In addition to the netting of monthly payments in respect of AB32 Products and other Transactions, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

Option B: No Payment Netting with Payment for AB32 Transactions on the 5th Business Day following Delivery of AB32 Product. With respect to AB32 Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: “Unless otherwise agreed by the Parties in an AB32 Transaction, all invoices under this EEI Master Agreement for AB32 Products shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 5th Business Day following Delivery, or the 5th Business Day after receipt of the invoice by Buyer.” Section 6.4 of the EEI Master Agreement shall apply to all Transactions; provided, however, for this limited purpose only, monthly payments for AB32 Products shall be netted only with monthly payments for other AB32 Products. If an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3 of the EEI Master Agreement.

PARAGRAPH FOUR: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR TRANSACTIONS RELATING TO AB32 PRODUCTS

The following provisions apply to AB32 Products only.

4.1 Holding Accounts. Seller shall be responsible for all expenses associated with establishing and maintaining Seller’s Holding Account, paying expenses associated with the issuance and transfer fees for the AB32 Product, and transferring the AB32 Product from Seller’s Holding Account to the Delivery Point in accordance with the terms of the Transaction. In Section 3.1 and Section 9.2 of the EEI Master Agreement, “at and from” is revised to “from and after Receipt”. Each Party will be responsible for the payment of any broker’s fees incurred by it in connection with entering into any AB32 Transactions hereunder. If the AB32 Product is rejected by the Executive Officer as a result of Buyer exceeding its holding limit provided in Section 95920 of the Cap and Trade Regulations or Buyer failing to take any action with its Holding Account necessary for Receipt, Article 4 of the EEI Master Agreement applies, and Seller shall not have failed to make such Delivery.

4.2 Further Assurances. Each Party will provide to the other any reasonably requested information or documentation required to implement Delivery, cooperate to cause Delivery to occur, and comply with any and all applicable procedures and requirements of Applicable Law relating to the recording and transfer of the AB32 Product.

4.3 Indemnity. “Claims” as used in Sections 1.8 and 10.4 of the EEI Master Agreement include civil and criminal sanctions and penalties. Nothing in this Annex is limited by the penultimate sentence of Section 10.8 of the EEI Master Agreement or by the last sentence of Section 10.9 of the EEI Master Agreement.

4.4 Transfer of Ownership. When transferring AB32 Product in an AB32 Transaction, whether or not the particular AB32 Product constitutes property, (a) Seller transfers any and all, and the exclusive, Emission Rights relating to that AB32 Product, as well as the exclusive right to claim ownership and use of the AB32 Product, and (b) Buyer gains the right, exclusive to the full extent applicable, to verify, certify and otherwise take advantage of the rights, claims, ownership and Emission Rights in the AB32 Product.

4.5 Non-Firm Quantities. If a Project may issue renewable energy certificates or other environmental attributes (“RECs”) but doing so impairs or diminishes the quantity of Offset Credits that may be issued by the Project in an AB32 Transaction that is Non-Firm, for example in order to comply with CPUC Decision 08-08-028 p. B-2, Seller shall not issue or sell such RECs, unless otherwise provided in the Confirmation.

4.6 Offset Credits. With respect to Offset Credits, without limiting Paragraphs 5.1 and 5.2 of this Annex:

4.6.1 Seller disclaims any representation or warranty concerning the effect of any purchase or sale with respect to Buyer’s Quantitative Usage Limit.

4.6.2 Seller will (a) select Verifiers in accordance with AB32 and (b) be responsible for all costs of Verifiers.

4.6.3 Seller shall ensure that no other person or entity not authorized by Buyer may claim the benefit or use of the Offset Credits or any part thereof or Emission Rights relating thereto.

4.6.4 Seller covenants that it will not at any time double claim, double report, or double count Delivered Offset Credits, and agrees that such covenant will survive Delivery, any termination of this Agreement and any Cancellation of any AB32 Transaction.

4.6.5 Seller represents and warrants that the Project is listed by an Offset Credit Registry, or Sector Based Crediting Program as that term is used in the Cap and Trade Regulations for Sector Based Offsets, and meets all of the requirements for Projects under AB32.

4.6.6 Seller shall cause permanent retirement in the original Offset Credit Registry with respect to any Offset Credit issued by CARB for early action.

4.6.7 Seller shall hold Buyer harmless with respect to all Offset Credits that are invalidated, rescinded or otherwise revoked by the Offset Credit Registry or by CARB pursuant to 17 CCR §95985 or otherwise, by providing Buyer within five Business Days, at Buyer’s election, either Replacement Offset Credits or the Replacement Price.

4.6.8 Seller warrants and represents that Sector-Based Offset Credits first issued pursuant to a CARB-approved protocol for Reducing Emissions from Deforestation and Forest Degradation (REDD) Plans are issued with a buffer risk or contingency reserve addressing reversal.

4.7 Tariffs; Energy. Party A Tariff and Party B Tariff do not apply to AB32 Transactions unless specifically so stated in the AB32 Confirmation and provided under Applicable Law. An AB32 Transaction may be entered into in connection with a Transaction for Energy. Delivery of AB32 Product can be with or independent of delivery of the Energy with which the AB32 Product is associated if so permitted under AB32 and Applicable Law.

PARAGRAPH FIVE: FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Mutual Representations and Warranties. On the Effective Date of this Annex and on each Trade Date, each Party represents and warrants to the other what it has represented and warranted in Section 10.2 of the EEI Master Agreement and also that: (i) it is an “eligible commercial entity” and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively; (ii) the Parties enter into each AB32 Transaction intending it to be physically settled with Delivery of the AB32 Product and not to be financially settled or to otherwise constitute a “swap” within the meaning of Commodity Exchange Act §1a(47); and (iii) all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

5.2 Warranties and Certain Covenants of Seller. With respect to each AB32 Transaction and the AB32 Product thereunder, Seller represents and warrants to Buyer that: (i) to the extent the AB32 Product constitutes property rights, Seller has good and marketable ownership to such AB32 Product; (ii) Seller has not, under any AB32 or otherwise, sold to any other person or entity, or retired for its own benefit the AB32 Product or any part thereof; (iii) the AB32 Product meets the specifications set forth in the AB32 Transaction; and (iv) the AB32 Product complies with AB32 as of the Trade Date, or would have complied with AB32 as of the Trade Date if the AB32 Product existed as of the Trade Date, and, for an AB32 Transaction that is Regulatorily Continuing, also as of the Delivery Date.

5.3 Attestations; Records. Seller is responsible for (a) the truthful and complete submission of all attestations that are required pursuant to AB32 under the AB32 Transactions and (b) the safe, secure, and accessible storage thereof. Except with respect to the retirement of Offset Credits converted into CARB Offset Credits for early action, Seller shall have no obligation to retire or otherwise submit AB32 Product to CARB or any other Governmental Authority for Buyer’s AB32 compliance. Seller shall maintain all records relating to Allowances for two years from Delivery Date, and all records relating to Offset Credits or Sector-Based Offset Credits for nine years from Delivery Date. Upon Buyer’s request, Seller shall provide copies of its documentation and records including all documents that Buyer is required to maintain or provide to CARB in accordance with AB32 with respect to the AB32 Transaction. Seller shall maintain adequate records to assist Buyer or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the AB32 Product. Nothing in this Annex limits or waives any obligations of Seller to keep records or provide attestations provided in AB32.

PARAGRAPH SIX: ADDITIONAL TERMS RESPECTING REMEDIES AND FORCE MAJEURE

6.1 Not a Penalty. The Parties intend that no remedy or amount due hereunder represents a penalty to the Defaulting Party or Non-Performing Party.

6.2 Registry Suspension Event. If a Party is unable to Deliver or receive AB32 Product due to the occurrence of a disruption in Deliveries caused by the Registry which is not subject to Paragraph 7.1 and is not within the reasonable control of, or the result of the negligence of, such Party, which such Party was unable to avoid by the exercise of due diligence, and affects in generally the same manner other users of the Registry seeking to make a similar use of the Registry (a “Registry Suspension Event”), such Party shall provide the other Party with written notice and full details within two (2) Business Days of the Registry Suspension Event. In the event of a Registry Suspension Event, the Parties will use their best efforts to cause Delivery and Receipt of the applicable AB32 Product and give effect to the original intention of the Parties. No Party will be relieved due to a Registry Suspension Event from any obligation to provide any notice or make any payments due. A Registry Suspension Event excuses Delivery and Receipt while it is pending, and alone is not an event of Force Majeure.

6.3 Scope of Force Majeure. This Paragraph 6.3 is in addition to and not in replacement of the provisions respecting Force Majeure in the EEI Master Agreement. Force Majeure may not be based upon change in Applicable Law or Government Action, any change in the price or value of AB32 Product in the market generally; any disability or penalty arising with respect to a Party as a result of the failure to comply with AB32; change in the Auction Reserve Price or the Allowance Price Containment Reserve Price, as those terms are used in the Cap and Trade Regulations; change in the manner of distribution or allocation of Allowances to regulated entities by CARB; or changes to the number of Allowances that may be purchased or retired by non-regulated or opt-in entities. In the case of a Party’s obligation to make payments hereunder, Force Majeure will be only an event or act of Force Majeure that on any day disables generally in the city in which a Party’s invoice payment employees work access to the nation’s banking system.

PARAGRAPH SEVEN: CHANGE IN APPLICABLE LAW

7.1 Government Action.

7.1.1 Unless otherwise provided in an AB32 Transaction, upon the occurrence of Government Action, either Party shall, notwithstanding Section 5.2(i) of the EEI Master Agreement, be entitled to terminate and cancel (any such termination and cancellation, a “Cancellation”) any and all affected AB32 Transactions. In the event of any such Cancellation, neither Party shall have any further payment or performance obligations under the Cancelled AB32 Transactions; provided, however, that the Parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed respecting, AB32 Product Received prior to such Cancellation and Seller shall refund to Buyer, to the extent it is lawful to do so, any amount previously paid by Buyer for any AB32 Product not Received prior to such Cancellation.

Neither Party shall have any rights to, or obligations or liability for, payment of a Termination Payment for or as a result of any Cancellation of any AB32 Transaction. Cancellation of AB32 Transactions shall not terminate or affect the EEI Master Agreement or any other Transactions thereunder.

7.1.2 During a Program Interim Suspension, the Delivery Date automatically extends such that neither Party has an obligation to Deliver or Receive the AB32 Product to the extent prevented by the Government Action. If a Program Interim Suspension is terminated, lifted or ceases to apply within a Commercially Reasonable Period following the effective date of the Government Action, then the Parties shall immediately resume performance under the terms of the AB32 Transaction in good faith. If the Program Interim Suspension is not terminated within a Commercially Reasonable Period following the effective date of the Government Action, then the Program Interim Suspension will constitute Government Action on the basis of which the affected AB32 Transactions will be subject to Cancellation by either Party in accordance with Paragraph 7.1.1 of this Annex.

7.1.3 Notwithstanding the foregoing, (a) no AB32 Transaction will be subject to Cancellation or otherwise affected by Government Action that is specific to a Party and that is taken by a Governmental Authority on the basis of any actual or alleged violation of any Applicable Law by such Party and (b) Government Action and Program Interim Suspension do not suspend or abrogate any other right of a Party to terminate an AB32 Transaction or exercise a remedy hereunder not relating to such Government Action, such as such a right arising pursuant to an Event of Default.

7.2 Governing Law. Notwithstanding Section 10.6 of the EEI Master Agreement, the creation, issuance, transfer, tracking and retirement of AB32 Product shall be governed by the laws, rules and regulations of California.

Schedule 1: Outstanding AB32 Transactions

The AB32 Transactions set forth below constitute Outstanding AB32 Transactions:

Schedule 2: Applicability of Collateral Annex

The Collateral Annex applies to all AB32 Transactions except those set forth below:

**EXHIBIT A: EXAMPLE AB32 TRANSACTION
CONFIRMATION**

To:

From:

Confirmation Administration

Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [_____] and the EEI California AB32 Product Annex dated [_____] (“Annex”) thereto (collectively, the “Agreement”).

Trade Date _____

Seller: _____

Seller Account No.: _____

Buyer: _____

Buyer Account No.: _____

Type of AB32 Product: Allowance
 Offset Credit Protocol: _____
 Sector-Based Offset Credit

Quantity: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: yes/ no; if neither checked, yes applies.

Penalties are part of Replacement Price: yes/ no; if neither checked, yes applies.

Associated Energy/Capacity transaction, if applicable:
import node; other information.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____

Signed: _____

Name: _____

Name: _____

**EXHIBIT A-1: EXAMPLE AB32 TRANSACTION
PRE-FIRST AUCTION CONFIRMATION**

[for use only before first auction]

To:

From:

Confirmation Administration

Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [_____] and the EEI California AB32 Product Annex dated [_____] (“Annex”) thereto (collectively, the “Agreement”).

[optional:] This Transaction is contingent upon the Registry becoming operational and the first Auction occurring on or before _____, 2012. If both events do not occur before such date, this Transaction shall at the option of either Party be terminated and upon such termination neither Party shall have any further payment or performance obligations and Seller shall refund to Buyer any amount previously paid by Buyer for prior to such termination.

Trade Date _____

Seller: _____

Seller Account No.: _____

Buyer: _____

Buyer Account No.: _____

Type of AB32 Product: Allowance
 Offset Credit Protocol: _____
 Sector-Based Offset Credit

Quantity: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: yes/ no; if neither checked, yes applies.

Penalties are part of Replacement Price: yes/ no; if neither checked, yes applies.

Associated Energy/Capacity transaction, if applicable:

import node; other information.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____

Signed: _____

Name: _____

Name: _____

**EXHIBIT A-2: EXAMPLE CLIMATE RESERVE TONNE
TRANSACTION CONFIRMATION**

To:

From:

Confirmation Administration

Confirmation Administration

This confirms an AB32 Transaction between Buyer and Seller for the sale, purchase and delivery of AB32 Product pursuant to the terms of the EEI Master Power Purchase and Sale Agreement between them dated [_____] and the EEI California AB32 Product Annex dated [_____] (“Annex”) thereto (collectively, the “Agreement”).

Trade Date _____

Seller: _____

Seller Account No.: _____

Buyer: _____

Buyer Account No.: _____

Type of AB32 Product: CRTs

Quantity: _____

Protocol: _____

Vintage: _____

Price: _____

Delivery Date: _____

Delivery Term: _____

Regulatorily Continuing: (x) no

Penalties are part of Replacement Price: (x) no

For this Transaction, the Annex is changed as follows:

Delivery Point is Buyer’s CAR account.

A Party’s Holding Account means the Party’s CAR account.

Replacement Offset Credits means Offset Credits generated by a Project meeting CAR requirements and having the same Vintage and pursuant to the same Compliance Offset Protocol as the CRTs in this Transaction.

Paragraph 7 of the Annex does not apply.

Until the ____ anniversary hereof, if any state, regional, federal or international registry or program for offset projects, or GHG registry or program, or system for the transfer of Offset Credits, that involves sources or sinks in the nature of the Project, is implemented, Seller shall provide all Project documents to Buyer if Buyer, at its expense, elects to additionally register or

have Seller register the Offset Credits, with any such registries.

The Parties agree to the AB32 Transaction set forth herein.

[Seller]

[Buyer]

Signed: _____
Name: _____

Signed: _____
Name: _____