**RENEWABLE POWER PURCHASE AGREEMENT**

**COVER SHEET**

*[NTD: Contract form assumes either a solar, wind or geothermal generator, either connected to or located outside the CAISO grid; with Buyer as scheduling coordinator for facilities that are connected to the CAISO grid and Seller as scheduling coordinator for facilities located outside the CAISO grid. Contract adjustments will be necessary for resources that differ from these assumptions]*

**Seller**:[*Seller Name, e.g., Project Company LLC*] (“**Seller**”)

**Buyer**:California Community Power, a California joint powers authority (“**Buyer**”)

**Description of Facility**: A [XX] MW [solar, wind, geothermal] electricity generating facility, located in \_\_\_\_\_\_\_\_\_\_\_ County, in the State of \_\_\_\_\_\_\_\_\_\_\_, as further described in Exhibit A.

**Milestones**:

| **Milestone** | **Expected Date for Completion** |
| --- | --- |
| **Evidence of Site Control** |  |
| **CEC Pre-Certification Obtained** |  |
| **Documentation of Conditional Use Permit if required:****[ ] CEQA, [ ] Cat Ex, [ ]Neg Dec, [ ] Mitigated Neg Dec,** **[ ] EIR** |  |
| **Seller’s receipt of** [*CAISO*: **Phase I and Phase II Interconnection**][*non-CAISO*: **facilities] study results for Seller’s Interconnection Facilities** |  |
| **Notice to Proceed** |  |
| **Executed Interconnection Agreement** |  |
| **Financial Close** |  |
| **Major Equipment procured** |  |
| **Material Permits obtained** |  |
| **Guaranteed Construction Start Date** |  |
| **[*CAISO*: Full Capacity Deliverability Status obtained]** |  |
| **Initial Synchronization** |  |
| **Network Upgrades completed** |  |
| **Expected Commercial Operation Date** |  |
| **Guaranteed Commercial Operation Date** |  |

**Delivery Term**: [XX] Contract Years.

**Expected Energy**:

| **Contract Year** | **Expected Energy (MWh)** |
| --- | --- |
| 1 – [XX] | [XX] |

**Guaranteed Capacity**:[XX] MW-AC

**Guaranteed Energy Production:** [*solar / wind*: Eighty-five percent (85%)] [*geothermal*: Ninety-five percent (95%)] of the Expected Energy for the applicable Performance Measurement Period

**Dedicated Interconnection Capacity**: [XX] MW

**Contract Price**:

The Base Contract Price shall be:

|  |  |
| --- | --- |
| **Contract Year** | **Base Contract Price** |
| 1 – [XX] | $[XX.XX]/MWh (flat) with no escalation |

The Expected Contract Price and the Contract Price shall be calculated from the Base Contract Price as set forth in Exhibit C, Section (h).

The Maximum Contract Price shall be the Base Contract Price multiplied by [1XX]%.

**Product**:

☒ Delivered Energy

☒ Green Attributes (Portfolio Content Category 1)

☒ Ancillary Services

[x]  Imbalance Reserves

☒ Capacity Attributes

☐ [*CAISO*: Full Capacity Deliverability Status]

☒ [*non-CAISO*: Resource Specific Import RA]

**Scheduling Coordinator**: [*non-CAISO*: Seller/Seller Third Party] [*CAISO*: Buyer/Buyer Third Party]

**Security Amount**:

Development Security: $125,000 per MW of Guaranteed Capacity (as measured as of the Effective Date)

Performance Security: $105,000 per MW of Guaranteed Capacity (as measured as of the Commercial Operation Date)

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**RENEWABLE POWER PURCHASE AGREEMENT**

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of [\_\_\_\_\_\_\_\_\_], 2024 (the “**Effective Date**”), between Buyer and Seller. Buyer 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 Article 1 to this Agreement.

**RECITALS**

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

[*MTR/FCR*: WHEREAS, Buyer is entering into the Agreement with the intention that the Facility will be counted toward Buyer’s [*solar / wind*: Mid-Term Reliability] [*geothermal*: Firm Clean Resource] obligations set forth in CPUC D.21-06-035 and D.23-02-040 (as may be revised by further decisions);]

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

# DEFINITIONS

## **Contract Definitions**

. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(e).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Administrative NQC Reduction**” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility that cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of Seller due to a reduction that has been generally applied to resources materially similar to the Facility in terms of technology type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Installed Capacity of the Facility, including spinning reserve, non-spinning reserve, regulation up, regulation down, as each is defined in the CAISO Tariff, and any other ancillary services added to the Agreement in accordance with Section 3.10.

“**Approved Forecast Vendor**” means any of (a) the CAISO or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Attestation**” has the meaning set forth in Section 4.10.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automated Dispatches**” has the meaning set forth in Section 6.1(b).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Available Generating Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Base Generation Cost**” has the meaning set forth in Exhibit C, Section (h)(i).

“**Base Contract Price**” the meaning set forth on the Cover Sheet. The Base Contract Price will equal the Contract Price if all applicable Import Tariff Rates on *[photovoltaic modules] [wind turbine blades]* are equal to 0%.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (“**PPT**”).

“**Buyer**” means California Community Power, a California joint powers authority.

[*CAISO*: “**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Energy than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Energy, including where Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.]

[*CAISO*: “**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce Delivered Energy by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.]

[*CAISO*: “**Buyer Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Delivered Energy pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.]

“**Buyer Default**” means a failure by Buyer or its agents to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer.

“**Buyer’s Indemnified Parties**” has the meaning set forth in Section 16.1(a).

“**Buyer Liability Pass Through Agreement**” means the form set forth in Exhibit L.

“**Buyer’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

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

“**CAISO Approved Meter**” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Delivered Energy delivered to the Delivery Point.

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“**CAISO Operating Order**” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

“**CAISO Tariff**” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“**California Renewables Portfolio Standard**” or “**RPS**” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Delivered Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**CIRA Tool**” means the CAISO Customer Interface for Resource Adequacy.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“**Compliance Actions**” has the meaning set forth in Section 3.12(c).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12(b).

“**Compliant Project Participant**” means a Project Participant that is not a Defaulted Project Participant.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth in Exhibit C, Section (h) and is calculated from the Base Contract Price set forth on the Cover Sheet and the applicable Import Tariff Rate.

“**Contract Term**” has the meaning set forth in Section 2.1(a).

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**CPM Soft Offer Cap**” has the meaning set forth in the CAISO Tariff.

“**CPUC**” means the California Public Utilities Commission, or any successor agency performing similar statutory functions.

“**CPUC Master Resource Database**” means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits to load serving entities.

“**CPUC System RA Penalty**” means the system RAR penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual “Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings” that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

“**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 S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**CRS**” has the meaning set forth in Section 4.10.

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(vi).

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

“**Curtailment Order**” means any of the following:

1. CAISO or Transmission Provider orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Delivered Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s or the Transmission Provider’s electric system integrity or the integrity of other systems to which CAISO or the Transmission Provider is connected;
2. a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;
3. a curtailment ordered by the CAISO or Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider’s or CAISO’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy to the Delivery Point; or
4. a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

“**Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“**Damage Payment**” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount set forth in Section 11.3(a).

“**Day-Ahead Forecast**” has the meaning set forth in Section 4.3(c).

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

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

“**Dedicated Interconnection Capacity**” means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Interconnection Point under Seller’s Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

[*non-CAISO*: “**Deemed Delivered Energy**” means the amount of electrical energy in excess of the Curtailment Cap, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Market Curtailment Period, which amount shall be calculated as the difference between (a) [*geothermal*: the product of (i) the arithmetic average of the Facility’s metered output rate, in MW, immediately before and after such Market Curtailment Period, as applicable, and (ii) the duration of such Market Curtailment Period, as applicable] [*solar / wind*: using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Market Curtailment Period], less (b) the amount of Delivered Energy delivered to the Delivery Point during the Market Curtailment Period, if any; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).]

[*CAISO*: “**Deemed Delivered Energy**” means the amount of electrical energy in excess of the Curtailment Cap, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be calculated using (a) [*geothermal*: the product of (i) the arithmetic average of the Facility’s metered output rate, in MW, immediately before and after such Buyer Curtailment Period, as applicable, and (ii) the duration of such Buyer Curtailment Period, as applicable] [*solar / wind*: using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period], less (b) the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period, if any; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).]

“**Deemed Delivered RA**” means, for the applicable Showing Month, the amount of Net Qualifying Capacity, expressed in MW, that the Facility would have been able to deliver as Resource Adequacy Benefits [*solar / wind*: for the hour corresponding to the Maximum Hourly RA Capacity], but for (a) a Force Majeure Event as provided in Section 10.1, or (b) Planned Outages permitted by the terms of this Agreement, to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility [*solar / wind*: for the hour corresponding to the Maximum Hourly RA Capacity] [*non-CAISO*: , or (c) the failure of Buyer to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO].

“**Defaulted Liability Share**” means the Liability Share of a Defaulted Project Participant.

“**Defaulted Project Participant**” means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under the Project Participation Share Agreement have been suspended or terminated.

“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.8(e).

“**Delivered Energy**”means for each hour, the electric Energy generated by the Facility, net of Electrical Losses and Station Use, and delivered to the Delivery Point.

“**Delivered RA**” means an amount, expressed in MW, calculated for the applicable Showing Month as the sum of (a) the amount of Net Qualifying Capacity of the Facility [*solar / wind*: for the hour corresponding to the Maximum Hourly RA Capacity] for such Showing Month able to be shown on Project Participants’ monthly or annual Resource Adequacy Plans to the CAISO and CPUC and able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC, (b) Deemed Delivered RA, and (c) Replacement RA.

“**Delivery Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Disclosing Party**”has the meaning set forth in Section 18.2.

[*non-CAISO*: “**Dynamic Resource-Specific System Resource**” has the meaning set forth in the CAISO Tariff.]

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Date**”has the meaning set forth in the Preamble.

[*non-CAISO*: “**Electrical Losses**” means, subject to meeting any applicable CAISO requirements, including, as applicable, CAISO’s rules for Pseudo-Tie Resources, and in accordance with Section 7.1 all transmission or transformation losses between the Facility Metering Point and the Delivery Point associated with delivery of Delivered Energy.]

[*CAISO*: “**Electrical Losses**” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses between the Facility Metering Point and the Delivery Point associated with delivery of Delivered Energy.]

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means alternating current electrical energy measured in MWh.

[*CAISO*: “**Energy Supply Bid**” has the meaning set forth in the CAISO Tariff.]

“**Environmental Cost**” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’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 Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the 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.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Excess MWh**” has the meaning set forth in Exhibit C.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Contract Price**” means the estimate of the Contract Price calculated by Seller pursuant to Exhibit C, Section (h)(i) prior to NTP.

**“Expected Contract Price Notice**” has the meaning set forth in Exhibit C, Section (h)(ii).

“**Expected Energy**” means the quantity of Delivered Energy that Seller expects to be able to deliver to Buyer during each Contract Year (or other time period) in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5 of Exhibit B, if applicable.

**[***For QC15 or later projects only:* “**Expected Network Upgrade Costs**” means an amount equal to [$\_\_\_\_\_\_\_] corresponding to Seller’s estimate of the Facility’s responsibility for Network Upgrade Costs as of the Effective Date, which are to be borne by Seller and are included within the Contract Price, for purposes of interconnecting the Facility, as will be studied and estimated by Transmission Provider within the Phase 2 Interconnection Study results for the Facility.]

“**Facility**” means the generating facility described on the Cover Sheet and in Exhibit A, located at the Site, and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point, but excluding any Shared Facilities.

“**Facility Meter**” means a CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Energy generated by the Facility for the purpose of invoicing in accordance with Section 8.1. Without limiting Seller’s obligation to deliver Delivered Energy to the Delivery Point, the Facility Meter may be located at the low voltage or the high voltage side of the main step-up transformer, and Delivered Energy will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“**Facility Metering Point**” means the location(s) of the Facility Meter shown in Exhibit P.

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

“**Financial Close**” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

[*FCR/geothermal*: “**Firm Clean Resource**” means a resource that meets the requirements of CPUC Decisions 21-06-035 and D.23-02-040, including that such resource (a) has at least an eighty percent (80%) capacity factor and zero on-site emissions or otherwise qualifies under the California Renewable Portfolio Standard (RPS) program eligibility rules as PCC1, (b) is incremental to the CPUC’s baseline list, and (iii) is a Resource Adequacy Resource that is eligible to provide Resource Adequacy Benefits as set forth in the Resource Adequacy Rulings.];

[*non-CAISO*: “**Firm Transmission**” means transmission that cannot be curtailed within an operating hour for economic reasons or for higher priority transmission within the operating hour.]

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

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Delivered Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Forced Labor**” has the meaning set forth in Section 13.4(c).

[*CAISO*: “**Forecasting Penalty**” means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Delivered Energy, the *product of* (A) the absolute difference (if any) between (i) the Expected Energy for such hour set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Facility, *multiplied by* (B) the absolute value of the Real-Time Price in such hour.]

“**Full Capacity Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“**Future Environmental Attributes**” shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“**Gains**” means, with respect to any Non‑Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non‑Defaulting 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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“**GEP Damages**” has the meaning set forth in Section 4.7.

“**GHG Regulations**” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, *however*, “Governmental Authority” shall not in any event include any Party.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions 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; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Delivered Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility 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 Facility for compliance with local, state, or federal operating or air quality permits.

“**Green Tag Reporting Rights**” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Amount**” has the meaning set forth in Exhibit L.

“**Guaranteed Capacity**” means the generating capacity of the Facility, as measured in MW AC at the [*CAISO*: Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point)] [*non-CAISO*: Interconnection Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Interconnection Point)], that Seller commits to install pursuant to this Agreement, as set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Energy Production**” means an amount of Adjusted Energy Production, as measured in MWh, equal to the percentage of the total Expected Energy set forth on the Cover Sheet for the applicable Performance Measurement Period.

[*solar / wind*: “**Guaranteed RA Amount**” means, for any Showing Month, the Qualifying Capacity assigned to the Facility by the CPUC during the hour corresponding to the Maximum Hourly RA Capacity, *minus* Administrative NQC Reduction in the applicable Showing Month.]

[*geothermal*: “**Guaranteed RA Amount**” means, for any Showing Month, an amount of Qualifying Capacity, expressed in MW, equal to the Installed Capacity of the Facility, *minus* Administrative NQC Reduction in the applicable Showing Month.]

“**Hazardous Substance**” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“**Imbalance Energy**” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

“**Imbalance Reserves**” has the meaning set forth in the CAISO Tariff.

[*non-CAISO*: “**Import Capability**” means that portion of the Maximum Import Capability allocated by the CAISO at the appropriate intertie that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed RA Amount.]

“**Import Tariff Rate**” means the rate, expressed as a percentage, associated with any tariffs or duties applicable to the importation of the *[photovoltaic modules] [wind turbine blades]*, as applicable, for the Facility into the United States, but excluding any tariffs that are specific solely to an individual original equipment manufacturer.

“**Import Tariff Passthrough**” has the meaning set forth in Exhibit C, Section (h)(i).

“**Indemnified Party**” shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“**Indemnifying Party**” shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“**Initial Liability Share**” means the Liability Share of each Project Participant shown on Exhibit S as of the Effective Date.

“**Initial Synchronization**” means the initial delivery of Energy to the Delivery Point.

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW AC at the [*CAISO*: Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point)] [*non-CAISO*: Interconnection Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Interconnection Point)], that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5(a) of Exhibit B.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

[*non-CAISO*: “**Interconnected Control Area Operating Agreement**” means the operating agreement between the balancing authority where Facility is located and the CAISO, which governs the Pseudo-Tie arrangement.]

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interconnection Point**” means the point at which Seller’s Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

[*For QC15 or later projects only:* “**Interconnection Termination Fee**” means an amount equal to the product of (i) $25/kW and (ii) the Guaranteed Capacity in kW.]

“**Interest Rate**”has the meaning set forth in Section 8.2.

“**Investment Grade Credit Rating**” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 *et seq*.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated January 29, 2021, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Liability Share**” means the percentage amount set forth for each Project Participant in Exhibit S.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of [\_\_\_\_\_\_\_\_\_].

“**Local RAR**” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “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.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. 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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Default. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“**Major Equipment**” means [Seller to add].

[*non-CAISO*: “**Market Curtailment Period**”means the period-of-time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price; *provided*, the duration of any Market Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.]

“**Marketable Emission Trading Credits**” means 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 CAISO Tariff.

“**Material Permits**” means all permits required for Seller to commence construction, as set forth on Exhibit T.

“**Maximum Contract Price**” has the meaning set forth on the Cover Sheet.

[*solar / wind*: “**Maximum Hourly RA Capacity**” means, for any Showing Month, the highest hourly quantity of Qualifying Capacity for the Facility in such Showing Month.]

[*non-CAISO*: “**Maximum Import Capability**” has the meaning set forth in the CAISO Tariff, and includes any replacement or successor method implemented by the CAISO with respect to the ability of generating units that are external to the CAISO balancing authority area to provide Resource Adequacy Benefits.]

[*MTR / solar / wind*: “**Mid-Term Reliability**” means a resource that meets the requirements of CPUC Decisions 21-06-035 and D.23-02-040, including that such resource (i) qualifies under the California Renewable Portfolio Standard (RPS) program eligibility rules as PCC1, (ii) is incremental to the CPUC’s baseline list, and (iii) is a Resource Adequacy Resource that is eligible to provide Resource Adequacy Benefits as set forth in the Resource Adequacy Rulings.]

“**Meter Service Agreement**” means “Meter Service Agreement for CAISO Metered Entities” or “Meter Service Agreement for Scheduling Coordinators”, as applicable, as each are defined in the CAISO Tariff.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

“**Monthly Product Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for delivered Product, as calculated in accordance with Exhibit C.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars ($0) per MWh.

“**Negative LMP Costs**” has the meaning set forth in Exhibit C.

[*non-CAISO*: “**Negative LMP Strike Price**” means zero dollars per MWh ($0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Exhibit C; *provided*, in no event shall the Negative LMP Strike Price be greater than zero dollars per MWh ($0/MWh).]

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

“**Network Upgrade**” means collectively Delivery Network Upgrades and Reliability Network Upgrades.

**[***For QC15 or later projects only:* “**Network Upgrade Costs**” means those costs assigned to the Facility for the design, procurement, construction, and installation of Network Upgrades, as identified within the Phase 2 Interconnection Study results, including any Reliability Network Upgrades and Delivery Network Upgrades.]

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

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

“**Notice to Proceed**” or “**NTP**” means the milestone set forth on the Cover Sheet, which shall correspond to Seller’s finalization and preparation for execution of the following material agreements: conditional use permit; equipment supply agreement(s); engineering, procurement and construction agreement(s); interconnection agreement; and construction financing agreement.

“**Notification Deadline**” for a given Showing Month shall mean twenty (20) Business Days before the submission of the CAISO Supply Plan filings applicable to that Showing Month.

“**NP-15**”means the Existing Zone Generation Trading Hub for Existing Zone region NP-15 as set forth in the CAISO Tariff.

“**Outage Schedule**” has the meaning set forth in Section 4.6(a)(i).

“**Participating Generator Agreement**” has the meaning set forth in the CAISO Tariff.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Payment Demand**” has the meaning set forth in Exhibit L.

“**Performance Measurement Period**” means each two (2) consecutive Contract Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

“**Performance Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

1. A Tangible Net Worth of not less than one hundred fifty million dollars ($150,000,000) or a Tangible Net Worth of not less than fifty million dollars ($50,000,000) and a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and
2. At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Phase 2 Interconnection Study**” has the meaning set forth in the CAISO Tariff.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**Portfolio**” means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Prevailing Wage Requirement**” has the meaning set forth in Section 13.4(b).

“**Pro Rata**” means, for purposes of calculating a Project Participant’s Revised Liability Share, the ratio of (i) such Project Participant’s Initial Liability Share to (ii) the sum of the Initial Liability Shares of all of the Compliant Project Participants.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**Project Labor Agreement**” has the meaning set forth in Section 13.4(b).

“**Project Participant**” means each Person identified in Exhibit S that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Exhibit L.

“**Project Participant Approval**” means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and the Project Participation Share Agreement, and that Buyer has delivered to Seller Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

“**Project Participant Payment Default**” means any failure by a Project Participant to pay any material amount under the Project Participation Share Agreement as and when due (without giving effect to any extensions of time, waivers or late notices), including monthly amounts collected to fund, or to reserve funds for, payment of Buyer’s obligations under this Agreement.

“**Project Participation Share Agreement**” means that certain [Name] Project Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer’s responsibilities and liabilities under this Agreement, and any successor agreement.

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

[*non-CAISO*: “**Pseudo-Tie**” has the meaning set forth in the CAISO Tariff.]

[*non-CAISO*: “**Pseudo-Tie Resource**” means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement with the CAISO which allows for Capacity Attributes from the generating facility to be imported into the CAISO as “unit-specific” or “resource specific” import Resource Adequacy Benefits pursuant to applicable decisions of the CPUC.]

“**PTC**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

*[“****PV Cost****” has the meaning set forth in Exhibit C, Section (h)(i).]*

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

“**RA Compliance Showing**” 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, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“**RA Guarantee Date**” means the Commercial Operation Date.

“**RA Shortfall Amount**” means, for a given Showing Month, the difference, expressed in MW, of (i) the Guaranteed RA Amount minus (ii) the Delivered RA. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero (0) MW for such Showing Month.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which there is an RA Shortfall Amount.

“**RA Substitute Capacity**” has the meaning set forth in the CAISO Tariff.

“**Real-Time Forecast**” means any Notice of any change to the Available Generating Capacity or hourly expected Delivered Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

“**Real-Time Price**” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“**Receiving Party**” has the meaning set forth in Section 18.2.

“**Recurring Certificate Transfers**” has the meaning set forth in Section 4.8(a).

“**Reliability Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Remedial Action Plan**” has the meaning set forth in Section 2.4.

“**Renewable Conversion Factor**” has the meaning set forth in Exhibit C, Section (h)(i).

“**Renewable Energy Credit**” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“**Renewable Energy Incentives**” means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the ownership or operation of the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“**Replacement Green Attributes**” means Renewable Energy Credits that are Portfolio Content Category 1 (PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“**Replacement RA**” means Resource Adequacy Benefits from a Resource Adequacy Resource equivalent in all respects to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, Flexible RAR, the same Slice-of-Day generation profile and related characteristics, any successor criteria applicable to the Facility, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

“**Requested Confidential Information**” has the meaning set forth in Section 18.2.

“**Resource Adequacy Benefits**” means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include RAR, Flexible RAR, and Local RAR, and any successor criteria applicable to the Facility, including any Resource Duration attributes.

“**Resource Adequacy Plan**” has the meaning specified in the CAISO Tariff.

“**Resource Adequacy Requirements**” or “**RAR**” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“**Resource Adequacy Resource**” has the meaning set forth in the CAISO Tariff.

“**Resource Adequacy Rulings**” means any applicable CPUC ruling or decision relating to resource adequacy, or any other resource adequacy Law, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

[*non-CAISO*: “**Resource Specific Import RA**” means a resource that is listed on the CPUC’s Net Qualifying Capacity list and is either Pseudo-Tied or Dynamic Resource-Specific System Resource, and which satisfies all other applicable requirements under the Resource Adequacy Rulings, including CPUC Decisions 05-10-042 and 20-06-028.]

“**Revised Liability Share**” means the sum of a Project Participant’s Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, not to exceed one hundred twenty-five percent (125%) of such Participant’s Initial Liability Share.

“**S&P**” means the Standard & Poor’s Financial Services LLC (a subsidiary of S&P Global Inc.) or its successor.

“**SCADA Systems**” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” and “**Scheduling”** have a corollary meaning.

“**Scheduled Energy**” means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

“**Security Interest**” has the meaning set forth in Section 8.9.

[*CAISO*: “**Self-Schedule**” has the meaning set forth in the CAISO Tariff.]

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller’s Indemnified Parties**” has the meaning set forth in Section 16.1(b).

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**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 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 Settlement Amount shall be zero dollars ($0). The Settlement Amount shall not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages, unless such damages are part of a Party’s Gains, Losses or Costs as those terms are explicitly defined herein.

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

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable generation and delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

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

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, as may be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided* that any such update to the Site that includes real property that was not originally contained within or contiguous with the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**Slice-of-Day**” or “**SOD**” has the meaning set forth in the Resource Adequacy Rulings.

“**Station Use**” means:

* 1. The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and
	2. The Energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“**Step-Up Event**” means the forty-fifth (45th) day following the occurrence of a Project Participant Payment Default if such Project Participant Payment Default has not been cured by that date, regardless of whether or not notice was given to the Defaulted Project Participant under the Project Participation Share Agreement or otherwise or by Buyer hereunder.

“**Subsequent Purchaser**” means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

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

“**System Emergency**” means any condition that requires, as determined and declared by the CAISO or Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tangible Net Worth**” means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means (a) the PTC, ITC and any other federal, state, or local production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities and (b) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (a).

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3.

“**Test Energy**” means Delivered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Transmission Provider**” means any entity or entities transmitting or transporting the Delivered Energy on behalf of Seller or Buyer to or from the Delivery Point, but excluding Seller or any Seller’s Affiliate responsible for operating any gen-tie line to any point of interconnection to a Transmission Provider’s transmission or distribution system. For purposes of this Agreement, the Transmission Provider is set forth in Exhibit A.

“**Transmission System**” means the transmission facilities operated by Transmission Provider, now or hereafter in existence, which provide energy transmission service downstream from the Interconnection Point.

“**Ultimate Parent**” means [\_\_\_\_\_\_\_\_\_] a [\_\_\_\_\_\_\_\_\_] registered in [\_\_\_\_\_\_\_\_\_].

“**Unplanned Outage**” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

*[“****Wind Cost****” has the meaning set forth in Exhibit C, Section (h)(i).*

*“****Wind Tariff****” has the meaning set forth in Exhibit C, Section (h)(i).*

*“****Wind Tariff Passthrough****” has the meaning set forth in Exhibit C, Section (h)(i).]*

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

## **Rules of Interpretation**

. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

* + 1. headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
		2. words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
		3. the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
		4. a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
		5. a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
		6. a reference to a Person includes that Person’s successors and permitted assigns;
		7. the terms “include” and “including” mean “include or including without limitation” (as applicable) and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
		8. references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
		9. in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
		10. references to any amount of money shall mean a reference to the amount in United States Dollars;
		11. the expression “and/or” when used as a conjunction shall connote “any or all of”;
		12. words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
		13. each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

# TERM; CONDITIONS PRECEDENT

## **Contract Term**.

* + 1. The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein, including Section 2.1(b) (“**Contract Term**”); *provided*, *however*, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.
		2. Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within one hundred twenty (120) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Development Security then held by Buyer, if any, less any amounts drawn in accordance with this Agreement.
		3. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

## **Conditions Precedent**

. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer’s receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller’s request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. Upon Buyer’s approval (or deemed approval) of Seller’s achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

* + 1. Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;
		2. A Participating Generator Agreement [*non-CAISO*: or Pseudo-Tie Participating Generator Agreement, as applicable,] and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and are in full force and effect, and a copy of each such agreement has been delivered to Buyer;
		3. [*non-CAISO*: An Interconnected Control Area Operating Agreement or equivalent agreement required, if any, as a condition to Pseudo-Tie operations has been executed and is in full force and effect, and a copy of such agreement has been delivered to Buyer, to the extent available to Seller, or Seller has otherwise provided evidence reasonably satisfactory to Buyer that such agreement or its equivalent is in place;]
		4. Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect, and a copy of the Interconnection Agreement has been delivered to Buyer;
		5. All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;
		6. Seller has Site Control;
		7. [*non-CAISO*: Seller has obtained Firm Transmission rights sufficient to deliver the Guaranteed Capacity to the Delivery Point and has provided documentation of the same to Buyer;] [*CAISO*: Seller has obtained Full Capacity Deliverability Status and all Delivery Network Upgrades are complete;]
		8. Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);
		9. Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, qualified reporting entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;
		10. The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;
		11. Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;
		12. Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;
		13. Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and Commercial Operation Delay Damages;
		14. [*CAISO*: Seller has taken all actions and executed all documents and instruments required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to Schedule and dispatch the Facility; and]
		15. [*CAISO*: Seller has established a process to provide forecasts pursuant to Sections 4.3(c) and 4.3(d) to Buyer’s Scheduling Coordinator subject to Buyer’s approval, not to be unreasonably withheld].

## **Development; Construction; Progress Reports**

. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

## **Remedial Action Plan**

. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30) day period following the missed Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone; *provided*, in the event Seller misses any Milestone and Seller provides Notice to Buyer that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, as may be extended pursuant to Exhibit B, Buyer shall have the right to terminate this Agreement and retain the Development Security as liquidated damages. Such termination right must be exercised or reserved by Buyer in writing for due cause, if at all, within thirty (30) days after Buyer’s receipt of Seller’s Notice that it is not likely to be able to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Exhibit B).

# PURCHASE AND SALE

## **Purchase and Sale of Product**

. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses). Subject to Buyer’s obligation to purchase Capacity Attributes in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Energy, Ancillary Services or Capacity Attributes from any other resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.

## **Sale of Green Attributes**.

 Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Delivered Energy and Test Energy, if any, generated by the Facility.

## **Imbalance Energy**.

 Buyer and Seller recognize that in any given Settlement Period the amount of Delivered Energy may deviate from the amount of Energy Scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

## **Ownership of Renewable Energy Incentives**.

 Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

## **Future Environmental Attributes**.

* + 1. The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration.
		2. If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

## **Test Energy**.

 No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products, including Green Attributes, on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to one hundred percent (100%) of all net CAISO revenues received by Buyer for the Test Energy (the “**Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

## **Capacity Attributes**.

Prior to the Delivery Term, Seller shall [*CAISO*: obtain Full Capacity Deliverability Status for the Guaranteed Capacity with the CAISO pursuant to the CAISO’s New Resource Implementation process (as defined in the CAISO Tariff)] [*non-CAISO*: qualify the Facility as a Pseudo-Tie Resource with the CAISO pursuant to the CAISO’s New Resource Implementation process (as defined in the CAISO Tariff)]. [*CAISO*: Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status for the Facility. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Reliability Network Upgrades and/or Delivery Network Upgrades associated with obtaining such Full Capacity Deliverability Status.] [*non-CAISO*: Seller shall maintain the Facility as a Pseudo-Tie Resource in compliance with the CAISO Tariff throughout the Delivery Term.]

1. Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.
2. Throughout the Delivery Term, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Project Participants. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Project Participants.
3. [*non-CAISO*: Buyer shall cause the Project Participants to use commercially reasonable efforts to obtain the Import Capability at the Delivery Point necessary to import the Guaranteed RA Amount from the Facility into the CAISO. Seller shall use commercially reasonable efforts to support Buyer and Project Participants in obtaining such Import Capability. To the extent Project Participants do not or cannot maintain Import Capability at the Delivery Point necessary to support the importation of the Guaranteed RA Amount into the CAISO for reasons other than a Seller failure under this Agreement or the inability of Seller to maintain the Facility as a Pseudo-Tie Resource, the Capacity Attributes that are not imported or that cannot be imported shall constitute Deemed Delivered RA.]
4. [*non-CAISO*: No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Facility’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Resource Adequacy Benefits provided to Project Participants for each Showing Month.]
5. [*non-CAISO*: Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plans have been accepted by the CAISO. If CAISO rejects either the Supply Plans or Project Participants’ Resource Adequacy Plans with respect to any part of the Resource Adequacy Benefits in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plans or Resource Adequacy Plans for validation before the applicable Notification Deadline for the relevant Showing Month.]
6. If Seller anticipates that it will have an RA Shortfall Month, Seller may provide Replacement RA up to the anticipated RA Shortfall Amount; *provided*, any Replacement RA shall be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month.

## **Resource Adequacy Failure**

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* + 1. RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.
		2. RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount”**) equal to the sum of (i) the product of (A) the RA Shortfall Amount, and (B) the CPUC System RA Penalty and/or the CPM Soft Offer Cap assessed against Project Participants as a result of such RA Shortfall Amount, if any, and (ii) Project Participants’ cost of procuring replacement Resource Adequacy Benefits in a quantity up to the amount of the RA Shortfall Amount, or if Project Participants did not purchase replacement Resource Adequacy Benefits, the market cost of Resource Adequacy Benefits not purchased by Project Participants in a quantity up to the amount of the RA Shortfall Amount, as reasonably determined by Project Participants.

## **CEC Certification and Verification**.

Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

## **Ancillary Services**.

Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing during the Delivery Term, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide Ancillary Services in accordance with the specifications set forth in the Facility’s CAISO Certification associated with the Installed Capacity. Upon Buyer’s reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing without modification of the Facility; *provided*, Buyer shall reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

## **California RPS Standard Terms and Conditions**.

* + 1. Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].
		2. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12. The term “Project” as used in Section 3.11(a) means the Facility.
		3. Transfer of Renewable Energy Credits. 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. [STC REC-1].
		4. Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].
		5. The term “the contract” as used in Section 3.11(d) means this Agreement.

## **Compliance Expenditure Cap**.

1. The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation to Buyer that meets the requirements of the California Renewables Portfolio Standard and to provide Resource Adequacy Benefits to Buyer that comply with the Resource Adequacy Rulings. The Parties acknowledge that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to ensure that this Agreement or the Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller’s rights, benefits, risks and/or obligations under this Agreement.
2. If (i) a change in Law occurring after the Effective Date has increased Seller’s known or reasonably expected costs to (A) cause the Facility, the Energy generated by the Facility, or the associated Green Attributes to comply with the California Renewables Portfolio Standard, or to obtain, maintain, convey or effectuate Buyer’s use of any Green Attributes, or (B) obtain, maintain, convey or effectuate Buyer’s use of any Resource Adequacy Benefits, or (ii) a change in WREGIS Operating Rules after the Effective Date increases Seller’s costs to comply with its obligations under Section 4.8, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses that Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity in aggregate over the Contract Term (the “**Compliance Expenditure Cap**”).
3. Any actions required for Seller to comply with its obligations set forth in Section 3.12(b), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”
4. If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.
5. Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (i) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the “**Accepted Compliance Costs**”), or (ii) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not timely respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.
6. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

## **Buyer’s Re-Sale of Product**

. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller’s obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.13, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

# OBLIGATIONS AND DELIVERIES

## **Delivery**

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* + 1. Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Delivered Energy at and after the Delivery Point [*non-CAISO*: including without limitation transmission costs and transmission line losses and imbalance charges, and all costs of obtaining and maintaining Import Capability]. [*non-CAISO*: The Delivered Energy will be scheduled to the CAISO by Seller (or Seller’s designated Scheduling Coordinator) in accordance with Exhibit D.] [*CAISO*: The Delivered Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.]
		2. Green Attributes. All Green Attributes associated with Test Energy and the Delivered Energy are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, Seller has not sold such Green Attributes to any other person or entity, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

## **Title and Risk of Loss**.

* + 1. Energy. Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
		2. Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with the WREGIS Operating Rules.

## **Forecasting**

. Unless the Parties mutually agree to modified forecasting requirements, Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer’s designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

* + 1. Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Buyer’s SC (if applicable) a non-binding forecast of each month’s average-day expected Delivered Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1 (“**Form of Annual Average Expected Energy Report**”), or as reasonably requested by Buyer.
		2. Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer’s SC (if applicable) a non-binding forecast of the hourly expected Delivered Energy and Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 (“**Form of Monthly Available Generating Capacity Report**”).
		3. Day-Ahead Forecast. By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer and Buyer’s SC (if applicable) with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Delivered Energy, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of (x) the Available Generating Capacity and (y) the hourly expected Delivered Energy. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer.
		4. Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and Buyer’s SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity, and (ii) hourly Expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer and Buyer’s SC (if applicable) as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly Expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use best efforts to notify Buyer and Buyer’s SC (if applicable) of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer and Buyer’s SC (if applicable) of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.
		5. Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.
		6. [*CAISO*: Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Delivered Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.]
		7. CAISO Tariff Requirements. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol (as such terms are defined in the CAISO Tariff), including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

## **Dispatch Down/Curtailment**.

* + 1. General. [*non-CAISO*: Seller agrees to reduce the amount of Delivered Energy by the amount and for the period set forth in any Curtailment Order or during any Market Curtailment Period; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility. Buyer shall pay Seller for all Deemed Delivered Energy associated with a Market Curtailment Period in excess of the Curtailment Cap at the Contract Price in accordance with Exhibit C.] [*CAISO*: Seller agrees to reduce the amount of Delivered Energy, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility.]
		2. Failure to Comply. [*non-CAISO*: If Seller fails to comply with a Curtailment Order or to curtail Delivered Energy during a Market Curtailment Period, then, for each MWh of Delivered Energy that is delivered by the Facility to the Delivery Point in contradiction to the Market Curtailment Period or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Market Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Market Curtailment Period or Curtailment Order.] [*CAISO*: If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.]
		3. Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a [*non-CAISO*: Market Curtailment Period] [*CAISO*: Buyer Curtailment Period] or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(b) for failure to comply with a [*non-CAISO*: Market Curtailment Period] [*CAISO*: Buyer Curtailment Period] or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a [*non-CAISO*: Market Curtailment Period] [*CAISO*: Buyer Curtailment Period] or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

## **[Reserved]**

## **Outages**

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1. Planned Outages.
	1. No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller’s schedule of proposed Planned Outages (“**Outage Schedule**”) for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Seller shall limit Planned Outages to periods of the day when Seller does not reasonably believe the Facility will be dispatched. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer’s requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer’s comments.
	2. If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.6(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including any procurement of RA Substitute Capacity as required by the CAISO). Buyer may provide comments no later than ten (10) days after receiving Seller’s Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.
2. No Planned Outages During Summer Months. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.
3. Planned Outage Timing. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.
4. Notice of Unplanned Outages. Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.
5. Inspection. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.
6. Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

## **Guaranteed Energy Production**.

During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Adjusted Energy Production for the Performance Measurement Period, in MWh, equal to no less than the Guaranteed Energy Production. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**GEP Damages**”).

## **WREGIS**

. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Project Participants for their sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Project Participants and Project Participants shall be given sole title to all such WREGIS Certificates.

* + 1. Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Recurring Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Project Participants or the account(s) of their designees that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Project Participants’ WREGIS Accounts.
		2. Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Delivered Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
		3. Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Facility’s metered data. [*non-CAISO*: Seller shall comply with any requirements of the CPUC, CEC, WREGIS and/or California Air Resources Board applicable to entities delivering RPS-eligible energy into the CAISO market with respect to documenting and reporting e-tags, including, as applicable, any requirements to match e-tags to WREGIS Certificate creation. Seller agrees to provide Buyer any such information as may be reasonably required by Buyer to comply with any requirements to match e-tags to WREGIS Certificate creation, including the CPUC’s *PCC Classification Review Process Handbook* and any additional requirements.]
		4. Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Project Participants in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Project Participants shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.
		5. A “**WREGIS Certificate Deficit**”means any deficit or shortfall in WREGIS Certificates delivered to Project Participants for a calendar month as compared to the Delivered Energy except with respect to fractional amounts that are carried forward as otherwise provided in Section 4.8(b) for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided*, *however*, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
		6. If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

## **Interconnection**

. Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. During the Test Energy period and throughout the Delivery Term, Seller shall provide under the Interconnection Agreement interconnection capacity and rights to the Facility of not less than the Dedicated Interconnection Capacity. Seller shall not allow the interconnection capacity under the Interconnection Agreement that is associated with the Dedicated Interconnection Capacity to be used by any party other than Buyer, including in connection with the Shared Facilities.

## **Green-E Certification**

. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form (“**Attestation**”) for Product delivered under this Agreement to the Center for Resource Solutions (“**CRS**”) at [https://www.tfaforms.com/4652008](https://url.avanan.click/v2/r01/___https%3A//www.tfaforms.com/4652008___.YXAzOmNhbGlmb3JuaWFjb21tdW5pdHlwb3dlcjphOm86MTAyYTI1MWQ5MTNkOThjOWE5ZjlmMTNlMWEwMDEzNjE6NzpmZDNlOjVmOGNjZTRmMjc1N2IzYmY3ZTMxZDE5NDk2NDNkNDlkMWZkNTYwNTUxY2RhOTA3MTUxY2ZkNWI5ZjRlZTdhMGI6cDpUOkY) or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer’s request or the last day of the month in which the applicable Delivered Energy was generated, whichever is later.

# TAXES AND ENVIRONMENTAL COSTS

## **Allocation of Taxes and Charges**.

Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

## **Cooperation**.

Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## **Environmental Costs**.

 Seller shall be solely responsible for:

1. All Environmental Costs;
2. All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;
3. Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations; and
4. All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

# MAINTENANCE OF THE FACILITY

## **Maintenance of the Facility**.

1. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the delivery and sale of Product, and the disposal and recycling of any equipment associated with the Facility.
2. During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment.
3. Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 6.1(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.
4. Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

## **Maintenance of Health and Safety**.

Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer’s emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Delivered Energy to Buyer.

## **Shared Facilities**

. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among two or more of Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities shall (a) permit Seller to perform or satisfy, and shall not purport to limit, Seller’s obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Dedicated Interconnection Capacity; (b) provide for separate metering and a separate CAISO Resource ID for the Facility; (c) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility’s CAISO Resource IDs; and (d) provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

# METERING

## **Metering**.

Seller shall measure the amount of Delivered Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use in accordance with any applicable CAISO requirements [*non-CAISO*: including CAISO’s rules for Pseudo-Tie Resources], and in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or [*CAISO*: Buyer’s Scheduling Coordinator] [*non-CAISO*: Seller’s Scheduling Coordinator], shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface - Settlements (MRI-S) website and/or directly from the CAISO meter(s) at the Facility or directly from the CAISO meter(s) at the Facility.

## **Meter Verification**.

 Seller shall test the Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

# INVOICING AND PAYMENT; CREDIT

## **Invoicing**.

Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Delivered Energy, Replacement RA, the calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; (b) include the LMP prices at the Delivery Point for each Settlement Period, the Contract Price applicable to such Product deliveries, and Seller’s calculation of the Monthly Product Payment due from Buyer, calculated in accordance with Exhibit C, and including invoices or settlement data from the CAISO, necessary to verify the accuracy of such Monthly Product Payment; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. [*CAISO*: Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.] [[*non-CAISO*: Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices.] The invoice shall be delivered by electronic mail in accordance with Exhibit N.

## **Payment**.

 Buyer shall make Monthly Product Payments to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after Buyer’s receipt of Seller’s invoice; *provided* if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

## **Books and Records**.

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars ($10,000).

## **Invoice Adjustments**.

Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or (c) there have been meter inaccuracies; *provided*, *however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

## **Billing Disputes**.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

## **Netting of Payments**.

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

## **Seller’s Development Security**.

To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (a) Seller’s delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security; *provided*, *however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

## **Seller’s Performance Security**.

To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security; *provided*, *however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

## **First Priority Security Interest in Cash or Cash Equivalent Collateral**

. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

1. Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
2. Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
3. Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

## **Buyer Credit Arrangements**.

* + 1. To secure its obligations under this Agreement, Buyer shall deliver to Seller, within one hundred twenty (120) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit S. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of Buyer’s delivery of each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller’s, Buyer’s or the Project Participant’s rights or obligations thereunder. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting).
		2. Buyer may propose amendments to Exhibit S, including with respect to the identity of Project Participants and the amount of each Project Participant’s Liability Share. Seller shall have ten (10) Business Days to evaluate any such proposed amendments to Exhibit S in its sole but good faith discretion. If Seller approves such proposed amendments to Exhibit S, Buyer shall have thirty (30) days to provide Seller with replacement Buyer Liability Pass Through Agreements with Liability Shares executed by Buyer and the applicable Project Participants that incorporate the Liability Shares set forth in the amended Exhibit S. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant within ten (10) Business Days after Buyer’s delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller’s, Buyer’s or the Project Participant’s rights or obligations thereunder.
		3. Within sixty (60) days following a Step-Up Event, (i) Buyer shall provide Seller with replacement Buyer Liability Pass Through Agreements from all Compliant Project Participants executed by Buyer and the applicable Compliant Project Participants that reflect each Compliant Project Participant’s Revised Liability Share following such Step-Up Event, and, (ii) Exhibit S will be amended to reflect the Compliant Project Participants’ Revised Liability Shares following such Step-Up Event. Seller shall countersign each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Compliant Project Participant within ten (10) Business Days after Buyer’s delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning or failure to countersign any such Buyer Liability Pass Through Agreement shall affect Buyer’s or the Project Participant’s rights or obligations thereunder. Buyer will enforce the provisions of the Project Participation Share Agreement relating to nonperformance and payment defaults by Project Participants, including the use of the “Step-Up Allocation” provisions to cure a Project Participant Payment Default or a breach or default under any Buyer Liability Pass Through Agreement by the Project Participant party thereto, and will give Seller written notice within three (3) Business Days after the occurrence of any of the following: (A) any Project Participant Payment Default by any Project Participant under the Project Participation Share Agreement, including copies of any notices given to the Defaulted Project Participant, (B) the cure of any Project Participant Payment Default by a Defaulted Project Participant, (C) any actions taken to enforce remedies with respect to a Project Participant Payment Default, (D) the termination of any Project Participant’s interest under the Project Participation Share Agreement, and (E) the reallocation of any terminated Project Participant’s rights under the Project Participation Share Agreement, including the revised “Entitlement Shares” of each remaining Project Participant under the Project Participation Share Agreement. Following the occurrence of a Step-Up Event, Seller and Buyer will amend Exhibit S to set forth the Revised Liability Shares of the remaining Project Participants.

# NOTICES

## **Addresses for the Delivery of Notices**

. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

## **Acceptable Means of Delivering Notice**

. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

* + 1. if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;
		2. if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;
		3. if sent by electronic communication (including electronic mail or other electronic means), at the time indicated by the time stamp upon delivery and, if after 5 p.m. PPT, on the next Business Day; or
		4. if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

# FORCE MAJEURE

## **Definition**

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* + 1. “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
		2. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
		3. Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as a Development Cure Period under this Agreement; or (ix) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement.

## **No Liability If a Force Majeure Event Occurs**

. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (b) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and/or Section 11.1(b)(iv) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer’s remedies pursuant to Section 11.2.

## **Notice of Force Majeure Event**.

 Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller’s actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

## **Termination Following Force Majeure Event**

. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(c), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

# DEFAULTS; REMEDIES; TERMINATION

## **Events of Default**

. An “**Event of Default**” shall mean,

* + 1. with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default, the occurrence of any of the following:

#### the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

#### any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

#### the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8; and (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (vii), and (viii), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising best efforts);

#### such Party becomes Bankrupt;

#### such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

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

* + 1. with respect to Seller as the Defaulting Party, the occurrence of any of the following:

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

#### the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

#### if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan within the timeframe set forth under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

#### the failure by Seller to achieve the Construction Start Date on or before the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

#### Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

#### if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to (A) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days (“**Cure Plan**”) and (B) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

#### if, in any Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such Contract Year is not at least [*geothermal*: sixty-five percent (65%)] [*solar / wind*: fifty percent (50%)] of the Expected Energy amount for such Contract Year];

#### if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) is not at least [*geothermal*: eighty (80%)] [*solar / wind*: sixty-five percent (65%)] of the Expected Energy amount for such two (2) consecutive Contract Year period;

#### failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

#### with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

##### the issuer of such Letter of Credit becomes Bankrupt;

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

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

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

##### such Letter of Credit fails or ceases to be in full force and effect at any time; or

##### Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

* + 1. with respect to Buyer as the Defaulting Party, the occurrence of any of the following:
			1. Buyer fails to deliver executed revised Buyer Liability Pass Through Agreements from all Compliant Project Participants for their respective Revised Liability Shares within sixty (60) days following a Step-Up Event;
			2. following Project Participant Approval, Buyer fails to maintain Buyer Liability Pass Through Agreements from Project Participants with Liability Shares that total one hundred percent (100%), and such failure is not remedied within thirty (30) days after Notice thereof; or
			3. the breach of or default under any Buyer Liability Pass Through Agreement by the Project Participant party thereto; *provided*, Buyer shall have thirty (30) days after Notice thereof to cure any such breach or default by such Project Participant.

## **Remedies; Declaration of Early Termination Date**.

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

* + 1. to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;
		2. to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;
		3. to withhold any payments due to the Defaulting Party under this Agreement;
		4. to suspend performance; and
		5. to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.

## **Damage Payment; Termination Payment**

. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

* + 1. Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

#### If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the entire amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

#### If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the aggregate of all Settlement Amounts plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Without prejudice to Seller’s duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

* + 1. Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“**Termination Payment**”) shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

## **Notice of Payment of Termination Payment** **or Damage Payment**

. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

## **Disputes With Respect to Termination Payment or Damage Payment**

. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

## **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**

. If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price, except in the case of a termination pursuant to Section 11.10, Exhibit C, Section (h)(ii)(A) or Exhibit C, Section (h)(iii), in which case price and Guaranteed Commercial Operation Date may be modified) and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof. Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

## **Rights And Remedies Are Cumulative**

. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

## **Mitigation**

. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

## **Pass Through of Buyer Liability**

. Notwithstanding any other provision of this Agreement, if Buyer fails to make when due any payment required pursuant to this Agreement, and such failure is not remedied within ten (10) Business Days after Notice thereof, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Damage Payment or Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued Monthly Product Payments, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the Agreement as the result of an Event of Default by Buyer.

## [*For QC15 or later projects only:* **Termination Following Receipt of Phase 2 Study Results**

## . If Seller had requested a commercial operation date from Transmission Provider that is on or before the Expected Commercial Operation Date, and the Phase 2 Interconnection Study results for the Facility issued by CAISO and Transmission Provider indicate that (1) the Network Upgrade Costs assigned to the Facility exceed the Expected Network Upgrade Costs, or (2) the earliest achievable commercial operation date for the Facility is later than the Guaranteed Commercial Operation Date, Seller shall within thirty (30) days of its receipt of such Phase 2 Interconnection Study results provide Notice to Buyer along with a copy of such Phase 2 Interconnection Study results and detailed calculations that demonstrate the amount of the Contract Price increase, if any, that would result if such increased costs, if any, were to be passed along to Buyer through a Contract Price increase. Within thirty (30) days of Buyer’s receipt of Seller’s Notice issued pursuant to this Section 11.10, Buyer shall provide a responsive Notice to Seller stating whether Buyer will pay such increased Contract Price, if any, and/or grant a day-for-day extension to the Guaranteed Commercial Operation Date and any uncompleted Milestones equal to the number of days for which the earliest achievable commercial operation date for the Facility is later than the Guaranteed Commercial Operation Date, if any. Seller shall within three (3) Business Days of Buyer’s request, provide any other evidence reasonably requested by Buyer to demonstrate the reasonableness and authenticity of any unanticipated Network Upgrade cost increases or delays to commercial operation date, if any, and Seller’s corresponding calculation of the Contract Price increase, if any. If Buyer’s Notice to Seller states that Buyer will pay a higher Contract Price, if any, and/or extend the Guaranteed Commercial Operation Date and uncompleted Milestones as set forth in this Section 11.10, the Parties shall execute an amendment to this Agreement within sixty (60) days to update the Contract Price and/or Milestones, as applicable; *provided*, *however* the Parties shall not be required to agree to any unrelated amendments to the Agreement. If Buyer fails to provide a responsive Notice to Seller within the thirty (30) day timeframe set forth in this Section 11.10, or should the Parties fail to finalize an amendment to the Agreement within the subsequent sixty (60) day period, Seller may terminate the Agreement upon five (5) Business Days’ Notice to Buyer, and upon such termination Buyer will promptly return any unused portion of the Development Security amount minus the Interconnection Termination Fee. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Sections 2.1(c) and 11.6.]

# LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

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## **No Consequential Damages**.

EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

## **Waiver and Exclusion of Other Damages**.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY RENEWABLE ENERGY INCENTIVES, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

# REPRESENTATIONS AND WARRANTIES; AUTHORITY

## **Seller’s Representations and Warranties**

. As of the Effective Date, Seller represents and warrants as follows:

* + 1. Seller is a [\_\_\_\_\_\_\_\_\_\_], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
		2. Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary ***[limited liability company] [corporate]*** action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
		3. The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
		4. This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.
		5. The Facility will be located in the State of [\_\_\_\_\_\_\_\_].
		6. Seller shall maintain Site Control throughout the Contract Term.
		7. Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.
		8. [*FCR/geothermal*: The Facility is eligible to qualify as a Firm Clean Resource.][*MTR/solar/wind*: The Facility is eligible to qualify as a Mid-Term Reliability resource.]
		9. [*FCR/MTR*: The Product includes the exclusive right of Project Participants to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decisions 21-06-03 and 23-02-040.]
		10. [*FCR/MTR*: Seller will provide additional information and documentation to Buyer if necessary to enable Project Participants to demonstrate that the Product meets the procurement mandates set forth in CPUC Decisions 21-06-035 and 23-02-040.]
		11. [*non-CAISO*: Seller shall maintain Firm Transmission rights sufficient to deliver the Guaranteed Capacity to the Delivery Point throughout the Delivery Term.]
		12. [*non-CAISO*: Seller shall comply with all CAISO Tariff requirements applicable to Pseudo-Tie Resources, including Appendix N to the Tariff, throughout the Delivery Term.]

## **Buyer’s Representations and Warranties**

 As of the Effective Date, Buyer represents and warrants as follows:

* + 1. Buyer is a joint powers authority validly existing and in good standing under the laws of the State of California, and is qualified to conduct business pursuant to its duly authorized Joint Powers Agreement. All Persons making up the governing body of Buyer are appointed in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
		2. Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.
		3. The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
		4. This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.
		5. Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided*, *however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 *et seq*.)

## **General Covenants**

 Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

* + 1. It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
		2. It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
		3. It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

## **Seller’s Covenants**

 Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

* + 1. Compliance with Laws. To the extent applicable to Seller or the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.
		2. Workforce Development. [*California*: Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code Section 1720, any construction work contracted by Seller in furtherance of this Agreement shall (i) comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time (“**Prevailing Wage Requirement**”); and (ii) be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations (“**Project Labor Agreement**”).] [*Nevada*: Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination laws and prevailing wage laws.  In addition, Seller shall (i) ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages not less than the rate of such wages then prevailing in the region in which the Facility is located, as determined by the Nevada Labor Commissioner in the manner provided in [Nevada Revised Statutes Section 338.030](https://url.avanan.click/v2/r01/___https%3A//gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.leg.state.nv.us%2FNRS%2FNRS-338.html*23NRS338Sec030&data=04%7C01%7Cjeanne.sole%40sanjoseca.gov%7C17d6d6505b114b45c30808d9e11a1828%7C0fe33be061424f969b8d7817d5c26139%7C1%7C0%7C637788325479100901%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=F3o3yFYIMsadD0Td%2FE%2FR4c5j7As7UXZ3BF8aXBRqomM%3D&reserved=0___.YXAzOmNhbGlmb3JuaWFjb21tdW5pdHlwb3dlcjphOm86MTAyYTI1MWQ5MTNkOThjOWE5ZjlmMTNlMWEwMDEzNjE6NzoxYTU4OjlhNDI0ZWNkYmQ1ODI0N2RkZWU5NzYyYWZhZGUyMTVjMjI5M2Q5ZjNiZTRmYzJmYjVkNjNiZmM2MDc2Y2ZkNDI6cDpUOkY) (as may be amended from time to time), and are paid wages in compliance with [Nevada Revised Statutes Section 338.020](https://url.avanan.click/v2/r01/___https%3A//gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.leg.state.nv.us%2FNRS%2FNRS-338.html*23NRS338Sec030&data=04%7C01%7Cjeanne.sole%40sanjoseca.gov%7C17d6d6505b114b45c30808d9e11a1828%7C0fe33be061424f969b8d7817d5c26139%7C1%7C0%7C637788325479100901%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=F3o3yFYIMsadD0Td%2FE%2FR4c5j7As7UXZ3BF8aXBRqomM%3D&reserved=0___.YXAzOmNhbGlmb3JuaWFjb21tdW5pdHlwb3dlcjphOm86MTAyYTI1MWQ5MTNkOThjOWE5ZjlmMTNlMWEwMDEzNjE6NzoxYTU4OjlhNDI0ZWNkYmQ1ODI0N2RkZWU5NzYyYWZhZGUyMTVjMjI5M2Q5ZjNiZTRmYzJmYjVkNjNiZmM2MDc2Y2ZkNDI6cDpUOkY) (as may be amended from time to time) despite the Facility not constituting a public work under Nevada law, and permit no less than annual auditing by Buyer to verify such compliance (“**Prevailing Wage Requirement**”), or (ii) ensure that any construction work contracted by Seller in furtherance of this Agreement shall be conducted using a community workforce agreement, work site or project labor agreement, collective bargaining agreement, or other similar agreement related to construction of the Facility (“**Project Labor Agreement**”). The Facility may be eligible for a State of Nevada Renewable Energy Tax Abatement (“**RETA**”) agreement pursuant to Nevada Revised Statutes 701A.300-.390, inclusive, and Nevada Administrative Code Sections 701A.500-660, inclusive (the “**RETA Regulations**”). In lieu of complying with the Prevailing Wage Requirement, should Seller apply for and receive a RETA agreement, Seller may instead opt to comply with the requirements of the RETA Regulations, including the requirements of having a construction workforce comprised of no less than fifty percent (50%) Nevada residents, paying the construction workforce no less than one hundred seventy-five percent (175%) of the statewide average annual wage (as that phrase is defined in the RETA Regulations), and providing a health insurance plan satisfying the applicable requirements of the RETA Regulations. If Seller does not execute a Project Labor Agreement for the construction of the Facility, at the time of Commercial Operation, Seller must certify that it has either complied with the Prevailing Wage Requirement or the RETA Regulations, and be able to demonstrate, upon Buyer’s request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.]
		3. Prohibition Against Forced Labor Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily (“**Forced Labor**”).  Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

# ASSIGNMENT

## **General Prohibition on Assignments**

, Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any 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 Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer’s rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party’s reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys’ fees.

## **Collateral Assignment**

. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer 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 include the following provisions:

* + 1. Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;
		2. Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:
1. The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
2. Impediments to the cure plan or its development;
3. 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
4. Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will 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 will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender’s receipt of notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a Bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);
		2. Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;
		3. Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
		4. If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:
1. Cause such Event of Default to be cured, or
2. Not assume this Agreement;
	* 1. If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall 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 that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and
		2. Subject to Lender’s cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller’s Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer’s written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

## **Permitted Assignment**

 Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (California Government Code Section 81000 *et seq*.) or the regulations thereto, California Government Code Section 1090, or any other conflict of interest Law:

* + 1. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:
			1. Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
			2. Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment.
		2. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:
1. The assignee is a Permitted Transferee;
2. Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
3. Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.
	* 1. Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.
		2. Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any member of Buyer that (i) has a Credit Rating of at least BBB- from S&P and Baa3 from Moody’s, and (ii) is a load serving entity; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer’s obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by Buyer, its successors or assigns under this Section 14.3(d) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

## **Portfolio Financing**

. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.

## **Buyer Financing Assignment**

. Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer’s payment obligations under this Agreement with Seller’s prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory to Seller and its Lenders and do not adversely affect Seller or its arrangements with Lenders in any respect and that Seller is reimbursed for all costs and expenses incurred by Seller and its Lenders in connection with such transaction.

# DISPUTE RESOLUTION

## **Governing Law; Venue**.

* + 1. 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. [STC 17].
		2. For avoidance of doubt, although “agreement” is not capitalized in Section 15.1(a), the parties intend for “agreement” to mean this Agreement, and for “party” and “parties” to refer to the Party and Parties as set forth in the preamble to this Agreement.
		3. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of Sacramento.

## **Dispute Resolution**.

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall hold a meeting of executives (Vice President-level or above) to meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to them at Law in or equity. The Parties shall cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fee, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

## **Attorneys’ Fees**.

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

# INDEMNIFICATION

## **Indemnification**.

* + 1. Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the “**Buyer’s Indemnified Parties**”) from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller’s breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.
		2. Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the “**Seller’s Indemnified Parties**”) from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer’s breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents.
		3. Seller shall indemnify, defend, and hold harmless Buyer’s Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement.
		4. Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting solely from its own negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

## **Claims**.

Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which an indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

# INSURANCE

## **Insurance**

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* + 1. General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.
		2. Employer’s Liability Insurance. Seller, if it has employees, shall maintain Employers’ Liability insurance with limits of not less than One Million Dollars ($1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.
		3. Workers’ Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of [\_\_\_\_\_\_\_\_] Law.
		4. Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.
		5. Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.
		6. Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.
		7. Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
		8. Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard “all risk” property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.
		9. Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in form evidencing all coverages set forth above. Such certificates shall specify that Buyer shall be given at least thirty (30) days’ prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers’ compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

# CONFIDENTIAL INFORMATION

## **Definition of Confidential Information**

. The following constitutes “**Confidential Information**”, whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

## **Duty to Maintain Confidentiality**

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* + 1. The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.
		2. The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920 *et seq*.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.
		3. Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

## **Irreparable Injury; Remedies**

. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

## **Further Permitted Disclosure**

. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

## **Press Releases**

. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

# MISCELLANEOUS

## **Entire Agreement; Integration; Exhibits**

. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. 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.

## **Amendments**

. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

## **No Waiver**

. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

## **No Agency, Partnership, Joint Venture or Lease**

. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender, Indemnified Party and/or Project Participant.

## **Severability**

. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

## **Mobile-Sierra**

. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.

## **Counterparts**

. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

## **Electronic Delivery**

. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

## **Binding Effect**

. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

## **No Recourse to Members of Buyer**

. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 *et seq*.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.10, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

## **Forward Contract**

. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

## **Further Assurances**

. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

## **Change in Electric Market Design**

. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

*[Signatures on following page]*

 IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

|  |  |
| --- | --- |
| **[Seller]**By: Name: Title:  | **CALIFORNIA COMMUNITY POWER, a California joint powers authority**By: Name: Title: **Approved as to form:**By: Name: Title:   |
|  |  |

**EXHIBIT A**

**FACILITY DESCRIPTION**

**Site Name**:

**Site includes all or some of the following APNs**:

**County / State**:

**Zip Code**:

**Latitude and Longitude**:

**Facility Description**:

**Lead Permitting Agency**:

**Interconnection Point**:

**Delivery Point**:[*CAISO*: PNode] [*non-CAISO*: [Seller to designate Intertie on CAISO Grid]]

**Facility Meter**:See Exhibit P

**Facility Metering Points**:See Exhibit P

**Transmission Provider**:

**Additional Information**: Site plan provided below.

[Insert Site diagram]

**EXHIBIT B**

**MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION**

1. **Construction Start**.
	1. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors, and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.
	2. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Construction Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of Exhibit B.
2. **Commercial Operation of the Facility**. “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.
	1. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Construction Delay Damages paid by Seller and not previously refunded by Buyer.
	2. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b) of Exhibit B.
3. **Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation**. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iv) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
	1. a Force Majeure Event occurs; or
	2. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
	3. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller;
	4. the Contract Price would exceed the Maximum Contract Price as set forth in Exhibit C, Section ()(iii); or
	5. Buyer has not made all necessary arrangements to receive the Delivered Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

The maximum Development Cure Period associated with clause 4.d above shall not exceed three hundred sixty-five (365) days. Excluding any extensions pursuant to clauses 4.d and 4.e above, and notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clauses 4.d and 4.e above) shall not exceed two hundred seventy (270) days. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, or (ii) Seller failed to provide requested documentation as provided below. Except as set forth in Section 10.3 regarding Force Majeure Event notice requirements, Seller shall provide prompt written notice to Buyer of a Development Cure Period delay, but in no case more than ten (10) Business Days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

1. **Failure to Reach Guaranteed Capacity**.If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is up to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Three Hundred Thousand Dollars ($300,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Expected Energy shall be reduced to an amount equal to the product of (a) the amount of Expected Energy in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the Guaranteed Capacity.

**EXHIBIT C**

**COMPENSATION**

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

1. Monthly Product Payment. [*non-CAISO*: Buyer shall pay Seller for each MWh of Delivered Energy plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, in each Settlement Period, up to [*geothermal:* one hundred five percent (105%)] [*solar / wind:* one hundred fifteen percent (115%)]of the Expected Energy for each Contract Year, the difference of: (i) the Contract Price; minus (ii) the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Period; *provided*, *however*, that (A) if the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Period is less than the Negative LMP Strike Price, then such Day-Ahead Market LMP value will be deemed to be the Negative LMP Strike Price for purposes of this Exhibit C, and (B) if the result of the difference of (i) minus (ii) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller’s monthly invoice). Seller, through its Scheduling Coordinator, shall receive (and, except as otherwise provided in subpart (B) above, is entitled to retain) payment for Delivered Energy from CAISO for such delivery based on the applicable Energy price, as published by CAISO. For the avoidance of doubt, Buyer is purchasing a bundled product and Seller’s receipt of payment directly via CAISO settlements is for the Parties’ mutual convenience.] [*CAISO*: Buyer shall pay Seller the Contract Price for each MWh of Delivered Energy plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, up to [*geothermal:* one hundred five percent (105%)] [*solar / wind:* one hundred fifteen percent (115%)]of the Expected Energy for each Contract Year.]
2. Excess Contract Year Deliveries. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap, if any, for such Contract Year exceeds [*geothermal:* one hundred five percent (105%)] [*solar / wind:* one hundred fifteen percent (115%)] of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy, shall be equal to the lesser of (a) the Delivery Point LMP for the Day-Ahead Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than $0.00/MWh. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap for such Contract Year exceeds [*geothermal:* one hundred fifteen percent (115%)] [*solar / wind:* one hundred thirty-five percent (135%)]of the Expected Energy for such Contract Year, the Contract Price applicable to such Delivered Energy and Deemed Delivered Energy shall be zero dollars per MWh ($0/MWh).
3. Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Delivered Energy, in excess of the product of the Installed Capacity *multiplied by* the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“**Negative LMP Costs**”).
4. [*non-CAISO*: Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; *provided*, *however*, that the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh ($0/MWh).]
5. Curtailment Payments. [*CAISO*: Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap.] [*non-CAISO*: Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period, (ii) Deemed Delivered Energy in amounts below the Curtailment Cap, and (iii) Deemed Delivered Energy amounts accrued during a Market Curtailment Period for energy that the Facility was forecasted to generate in the Day-Ahead Forecast provided under Section 4.3(c) if the Day-Ahead Market LMP corresponding to such Day-Ahead Forecast was greater than the Negative LMP Strike Price.] Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap as provided above.
6. Test Energy. Test Energy is compensated in accordance with Section 3.6.
7. Renewable Energy Incentives. The Parties agree that neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Renewable Energy Incentives; if any Renewable Energy Incentives expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part; or Seller or its investors are unable to benefit from any Renewable Energy Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility's eligibility to receive Renewable Energy Incentives or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Delivered Energy and Product, shall be effective regardless of whether the sale of Delivered Energy is eligible for, or receives Renewable Energy Incentives during the Contract Term.
8. Import Tariff Adjustment.
	* + 1. The Contract Price shall be calculated as follows:

Contract Price = [Base Generation Cost + *[PV Cost] [Wind Cost]* x (1 + Import Tariff Passthrough x Import Tariff Rate)] / Renewable Conversion Factor, where:

“Base Generation Cost” = $\_\_\_\_\_ / MWAC, reflective of generation-related costs that are not affected by Import Tariff Rates, e.g., site control; permitting; interconnection; generation equipment not included within the *[PV Cost] [Wind Cost]* category, such as inverters, transformers, balance of plant; engineering, procurement and construction services; operations and maintenance services; taxes; etc.

*[“PV Cost” = $\_\_\_\_\_ / MWAC, and is reflective of costs relating to solar photovoltaic modules that may be sourced from overseas and may be subject to Import Tariff Rates.]*

*[“Wind Cost” = $\_\_\_\_\_ / MWAC, and is reflective of costs aligned to the wind turbine blades that may be sourced from overseas and may be subject to Import Tariff Rates.]*

“Import Tariff Passthrough” = \_\_ % corresponding to the share of the *[photovoltaic module] [wind turbine blade]* Import Tariff Rate borne by Buyer.

“Renewable Conversion Factor” = $ \_\_ / MWAC per $/MWh

The Base Contract Price shall be equal to the Contract Price, if the applicable Import Tariff Rates are equal to 0%.

* + - 1. The Expected Contract Price shall be calculated by Seller prior to NTP based upon the expected Import Tariff Rate applicable to Seller’s *[photovoltaic modules] [wind turbine blades]*. Seller shall provide evidence that it has made best efforts to secure competitively priced *[photovoltaic modules] [wind turbine blades]* at the then applicable Import Tariff Rates by providing documentation of the *[photovoltaic modules] [wind turbine blades]* quotes and the then applicable Import Tariff Rates to Buyer from vendors from at least three (3) different countries of origin, which may include the United States. Seller is not obligated to secure the lowest cost quote but shall provide commercially reasonable justification for why it elected to source *[photovoltaic modules] [wind turbine blades]* from a higher cost country of origin. Seller shall secure an independent evaluator, reasonably acceptable to Buyer, and at Seller’s sole expense to assess and certify that the *[photovoltaic module] [wind turbine blade]* quotes are consistent with the underlying equipment cost and reflective of the Import Tariff Rate then in effect. Seller shall provide Notice to Buyer of the Expected Contract Price prior to executing its *[photovoltaic modules] [wind turbine blade]* supply agreements (“**Expected Contract Price Notice**”).
				1. If the Expected Contract Price exceeds the Maximum Contract Price, Buyer shall have a right to terminate this Agreement upon thirty (30) days prior Notice to Seller, unless Seller agrees in its sole discretion to set the Contract Price at the Maximum Contract Price for all purposes under this Agreement. In the event of a Buyer termination under this Exhibit C, Section (k)(ii)(A), Seller shall pay the Damage Payment to Buyer within ten (10) days after the termination of this Agreement.
				2. If the Expected Contract Price is less than the Maximum Contract Price or Seller, in its sole discretion, elects to accept the Maximum Contract Price as the Contract Price, Seller shall execute its *[photovoltaic module] [wind turbine blade]* procurement agreement(s) and facilitate delivery of such generation equipment into the United States.
			2. Should the actual, applicable *[PV] [Wind]* Tariff increase after the date of the Expected Contract Price Notice and prior to the date of the equipment’s expected delivery to the United States, such that the Contract Price would exceed the Maximum Contract Price, Seller may elect to exercise its right to a Development Cure Period in accordance with Exhibit B, Section 4.d to seek alternative sources for the *[photovoltaic modules] [wind turbine blades]* or store the *[photovoltaic modules] [wind turbine blades]* in a customs bonded warehouse, foreign-trade zone, or other similar duty-free regime or pursue a similar tariff deferral strategy pending a potential Import Tariff Rate decrease in order to realize a Contract Price that is less than the Maximum Contract Price. If the Contract Price exceeds the Maximum Contract Price under this Exhibit C, Section (k)(iii) and either (A) Seller does not elect to exercise its right to a Development Cure Period under Exhibit B, Section 4.d, or (B) Seller is unable to realize a Contract Price that is less than the Maximum Contract Price upon expiration of the applicable Development Cure Period, Buyer shall have a right to terminate this Agreement upon thirty (30) days prior Notice to Seller, unless Seller agrees in its sole discretion to set the Contract Price at the Maximum Contract Price for all purposes under this Agreement. In the event of a Buyer termination under this Exhibit C, Section (k)(iii), Buyer shall promptly return the Development Security to Seller less any amounts drawn in accordance with this Agreement and neither Party shall have any further obligation or liability to the other Party except as otherwise set forth in this Agreement.

Upon importing the *[photovoltaic modules] [wind turbine blades]* to the United States, Seller shall provide Buyer Notice of the applicable Import Tariff Rate(s), provide supporting evidence of such Import Tariff Rates’ imposition, and calculate the Contract Price. The Parties shall confirm the final Contract Price through an amendment to this Agreement.

**EXHIBIT D**

**[*non-CAISO*: SCHEDULING COORDINATOR RESPONSIBILITIES**

### Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of Test Energy and the Product at the Delivery Point, and to bid the Delivered Energy into the Day-Ahead Market and the Real-Time Market consistent with Prudent Operating Practice. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. Seller (as the Facility’s SC) shall ensure that all Delivered Energy is electronically tagged (E-tagged) in accordance with Generally Accepted Utility Practice.

### CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be Seller’s responsibility.

### CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

### Master Data File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC Master Resource Database and Master Data File.  Seller shall provide the data to Buyer that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Seller (as SC) shall promptly provide such data to CAISO.  Seller shall provide the data that is required for the CPUC Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC.  Neither Party shall change such CAISO or CPUC data without the other Party’s prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) and CPUC Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

[*CAISO*: **SCHEDULING COORDINATOR RESPONSIBILITIES**

* + 1. Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.
		2. Notices. Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or fax transmission to the personnel designated to receive such information.
		3. CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); *provided*, any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility), or (iii) to the extent arising as a result of Seller’s failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.
		4. CAISO Settlements. Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“**CAISO Charges Invoice**”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.
		5. Dispute Costs. Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.
		6. Terminating Buyer’s Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
		7. Master Data File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC Master Resource Database and Master Data File.  Seller shall provide the data to Buyer that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO.  Seller shall provide the data that is required for the CPUC Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC.  Neither Party shall change such CAISO or CPUC data without the other Party’s prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) and CPUC Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.
		8. NERC Reliability Standards.Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.

**EXHIBIT E**

**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. A detailed description of all actions taken by Seller to comply with Prevailing Wage Requirement and Project Labor Agreement requirements of this Agreement.
12. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and Major Equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Workforce Development reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**FORM OF ANNUAL AVERAGE EXPECTED ENERGY REPORT**

 [Average Expected Energy, MWh Per Hour]

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **1:00** | **2:00** | **3:00** | **4:00** | **5:00** | **6:00** | **7:00** | **8:00** | **9:00** | **10:00** | **11:00** | **12:00** | **13:00** | **14:00** | **15:00** | **16:00** | **17:00** | **18:00** | **19:00** | **20:00** | **21:00** | **22:00** | **23:00** | **24:00** |
| **JAN** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **FEB** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **MAR** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **APR** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **MAY** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **JUN** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **JUL** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **AUG** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **SEP** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **OCT** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **NOV** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **DEC** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT F-2**

**FORM OF MONTHLY AVAILABLE GENERATING CAPACITY REPORT**

[Available Generating Capacity, MW] – [*Insert Month*]

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **1:00** | **2:00** | **3:00** | **4:00** | **5:00** | **6:00** | **7:00** | **8:00** | **9:00** | **10:00** | **11:00** | **12:00** | **13:00** | **14:00** | **15:00** | **16:00** | **17:00** | **18:00** | **19:00** | **20:00** | **21:00** | **22:00** | **23:00** | **24:00** |
| **Day 1** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Day 2** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Day 3** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Day 4** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Day 5** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **[insert additional rows for each day in the month]** |
| **Day 29** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Day 30** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Day 31** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT G**

**GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) \* (C – D)]

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market (as defined in the CAISO Tariff) hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point,plus (b) the lesser of (x) $50.00/MWh and (y) the market value of Replacement Green Attributes based on the average of at least two broker quotes obtained by Buyer from nationally recognized brokers for the purchase of Replacement Green Attributes, or if such quotes are not reasonably available to Buyer, as reasonably determined by Buyer.

D = the Contract Price, in $/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION date certifIcate**

This certification (“**Certification**”) of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to California Community Power, a California joint powers authority **(**“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] (“**Agreement**”) by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [*DATE*], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. Seller has installed equipment for the Facility with an Installed Capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [*DATE*].
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation on [*DATE*].
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [*DATE*].

EXECUTED by [licensed professional engineer]

this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

[licensed professional engineer]

By:

Printed Name:

Title:

**EXHIBIT I**

**FORM OF installed Capacity certifIcate**

This certification (“**Certification**”) of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] (“**Agreement**”) by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

* + 1. The performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).

EXECUTED by [licensed professional engineer]

this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

[licensed professional engineer]

By:

Printed Name:

Title:

**EXHIBIT J**

**FORM OF CONSTRUCTION START date certifIcate**

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
2. the Construction Start Date occurred on \_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Construction Start Date**”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

[SELLER ENTITY]

By:

Printed Name:

Title:

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

 Beneficiary:

California Community Power,

a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of \_\_\_\_\_\_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of California Community Power, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

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

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

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.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are 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.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least ninety (90) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: California Community Power, a California joint powers authority, [Title], [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of California Community Power, [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_\_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $\_\_\_\_\_\_\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $\_\_\_\_\_\_\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title of Authorized Representative

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT L**

**FORM OF BUYER LIABILITY PASS THROUGH AGREMENT**

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [\_\_\_\_\_\_], 20\_\_ (the “**BLPTA Effective Date**”) by and between [\_\_\_\_\_\_], a [\_\_\_\_\_\_] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and [\_\_\_\_\_], a [\_\_\_\_\_\_] (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

**RECITALS**

**WHEREAS**, CC Power and Seller have entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [\_\_\_\_\_], 20\_\_;

**WHEREAS**, Project Participant is entering into this BLPTA to secure, in part, CC Power’s obligations under the PPA;

**WHEREAS**, Project Participant is named as a Project Participant under the PPA and will derive substantial direct and indirect benefits from the execution and delivery of the PPA;

 **WHEREAS**, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

**WHEREAS**, initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

**AGREEMENT**

1. **Project Participant Covenants**. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [X%] (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, ***[Note: Insert percentage from Exhibit S]*** of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the PPA, including liabilities for Monthly Product Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the PPA, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the PPA shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant’s Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the PPA, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4, as applicable, Project Participant shall promptly pay Project Participant’s Liability Share of the Guaranteed Amount, as required herein.
2. **Seller Waiver**. In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the PPA, but the foregoing waiver does not apply to any other right or remedy of Seller under the PPA, including the right to recover accrued Monthly Product Payments, other amounts payable or reimbursable under the PPA or any other amounts incurred or accrued prior to termination of the PPA and the right to terminate the PPA as the result of an Event of Default by Buyer.
3. **Demand Notice**. For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the PPA and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4, as applicable. If CC Power fails to pay any amount when due pursuant to the PPA, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant’s Liability Share of the unpaid Guaranteed Amount (a “**Payment Demand**”). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant’s Liability Share of the unpaid Guaranteed Amount.
4. **Step-Up Events**. Within sixty (60) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant’s Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit S to the PPA will be deemed amended to reflect the Project Participant’s Revised Liability Share; *provided* that the Project Participant’s Revised Liability Share shall not exceed one hundred twenty-five percent (125%) of the Project Participant’s Initial Liability Share.
5. **Scope and Duration of BLPTA**. The obligations under this BLPTA are independent of the obligations of CC Power under the PPA, and an action may be brought to enforce this BLPTA whether or not action is brought against CC Power under the PPA. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the PPA has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the PPA are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant’s Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:
6. The extension of time for the payment of any Guaranteed Amount; or
7. Any amendment, modification or other alteration of the PPA; or
8. Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or
9. Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, including but not limited to any rejection or other discharge of CC Power’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding; or
10. Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
11. The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
12. CC Power’s inability to pay any Guaranteed Amount or perform its obligations under the PPA; or
13. Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.
14. **Waivers by Project Participant**.Project Participant hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against CC Power under the PPA or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the PPA have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the PPA now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the PPA and waives any defense based on CC Power’s authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.
15. **Project Participant Representations and Warranties and Covenants**. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant. Project Participant warrants and covenants that with respect to its contractual obligations under this BLPTA, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 *et seq*.); *provided*, this waiver shall not apply to the City of San José acting in its capacity as a Governmental Authority and not solely as the administrator of San José Clean Energy.
16. **Seller Representations and Warranties**. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.
17. **CC Power Representations and Warranties**. CC Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene CC Power’s organizational documents, any applicable Law or any contractual provisions binding on or affecting CC Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the CC Power, threatened, against or affecting CC Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of CC Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of CC Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by CC Power.
18. **Notices**. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 10.

If delivered to Seller, to it at:

[\_\_\_\_]

Attn: [\_\_\_\_]

Fax: [\_\_\_\_]

If delivered to Project Participant, to it at:

[\_\_\_\_]

Attn: [\_\_\_\_]

Fax: [\_\_\_\_]

If delivered to CC Power, to it at:

[\_\_\_\_]

Attn: [\_\_\_\_]

Fax: [\_\_\_\_]

### **Governing Law and Forum Selection**. This BLPTA shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of \_\_\_\_\_\_\_\_.

### **Miscellaneous**. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties’ successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

### **Assignment**. Except as provided below in this Paragraph 13, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the PPA, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller’s obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant’s obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

### **No Recourse to Members of Project Participant**. Project Participant is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 *et seq*.) pursuant to its joint powers agreement and is a public entity separate from its constituent members. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

### **No Recourse to Members of CC Power**. CC Power is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 *et seq*.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Except as expressly set forth in the PPA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

### **CleanPowerSF as Project Participant**. Paragraph 14 shall not apply with respect to CleanPowerSF as a Project Participant, if CleanPowerSF is a Project Participant, but the following shall apply:

### Designated Fund. CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF’s payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission (“**SFPUC**”) or the City and County of San Francisco or upon any non- CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco (the “**City**”).

### Controller Certification. CleanPowerSF’s obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

### Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco’s Board of Supervisors for each year of that budget cycle.

### Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

### Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

### Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

### Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

### Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

### Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

### Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

### Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq*.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq*.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

### Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller’s board of directors; Seller’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

### MacBride Principles – Northern Ireland.Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

### Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products, (a) Chapter 8 of the City’s Environment Code is incorporated herein and by reference made a part hereof as though fully set forth; (b) except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the City’s Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products; and (c) failure of Seller to comply with any of the requirements of Chapter 8 of the City’s Environment Code shall be deemed a material breach of contract.

### Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 16(d) through 16(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant’s liability hereunder, and no breach of or default by Seller under Sections 16(d) through 16(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

### **City of San José (San José Clean Energy) as Project Participant**. Paragraph 14 shall not apply with respect to the City of San José as a Project Participant, if the City of San José, as administrator of San José Clean Energy (“**SJCE**”) is a Project Participant, but the following shall apply:

### Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided*, *however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) (“**Designated Fund**”) for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE’s obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

### Limited Obligations. SJCE’s payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

### Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall comply with all applicable laws and agrees to not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will include in each subcontract entered into Seller after the Effective Date these same obligations. This prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability.

### Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller’s violation of this subsection (d) is a material breach.

### Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled “Prohibition of City Funding for Purchase of Single serving Bottled Water,” and San José City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy,” as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17(e) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

### Gifts Prohibited. Chapter 12.08 of the San José Municipal Code prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08.

### Disqualification of Former Employees. Chapter 12.10 of the San José Municipal Code prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

### Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant’s liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

 **IN WITNESS WHEREOF**, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

[**PROJECT PARTICIPANT**]:

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

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

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

**CALIFORNIA COMMUNITY POWER, a California joint powers authority**:

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

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

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

[**SELLER**]:

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

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

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

**EXHIBIT M**

**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [*SELLER ENTITY*] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.7(f) of the Agreement, Seller hereby provides the below Replacement RA product information:



[*SELLER ENTITY*]

By:

Printed Name:

Title:

**EXHIBIT N**

**NOTICES**

| [**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**](“Seller”) | **California Community Power, a California joint powers authority** (“Buyer”) |
| --- | --- |
| **All Notices:**Street: City: Attn: Phone: Email:  | **All Notices:**Street: 901 H St, Ste 120 PMB 157City: Sacramento, CA 95814Attn: General Counsel Phone: Email:  |
| **Reference Numbers:**Duns: Federal Tax ID Number:  | **Reference Numbers:**Duns: Federal Tax ID Number:  |
| **Invoices:**Attn: Phone: Email:  | **Invoices:**Attn: Phone: Email:  |
| **Scheduling:**Attn: Phone: Email:  | **Scheduling:**Attn: Phone: Email:  |
| **Confirmations:**Attn:Phone:Email: | **Confirmations:**Attn:Phone:Email: |
| **Payments:** Attn: Phone: Email:  | **Payments:** Attn: Phone: Email:  |
| **Wire Transfer:**BNK: ABA: ACCT:  | **Wire Transfer:**BNK: ABA: ACCT:  |
| **With additional Notices of an Event of Default to:**Attn: Phone: Facsimile: Email:  | **With additional Notices of an Event of Default to:**Attn: Phone: Facsimile: Email:  |
| **Emergency Contact:**Attn: Phone: Email:  | **Emergency Contact:**Attn: Phone: Email:  |

**EXHIBIT O**

**[RESERVED]**

**EXHIBI****T P**

**METERING DIAGRAM**

**EXHIBIT Q**

**[RESERVED]**

**EXHIBIT R**

**[RESERVED]**

**EXHIBIT S**

**PROJECT PARTICIPANTS AND LIABILITY SHARES**

|  |  |
| --- | --- |
| **Project Participant** | **Liability Share** |
| [CCA 1] | [%] |
| [CCA 2] | [%] |
| [CCA 3] | [%] |
| [CCA 4] | [%] |
| [CCA 5] | [%] |
| [CCA 6] | [%] |
| [CCA 7] | [%] |

**EXHIBIT T**

**MATERIAL PERMITS**

| *No.* | *Permits* |
| --- | --- |
| 1 |  |
| 2 |  |