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Town of Tiburon

Bob Simmons  
City of Walnut Creek  
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[mceCleanEnergy.org](http://mceCleanEnergy.org)

**Technical Committee Meeting**  
**Thursday, November 3, 2016**  
**9:00 A.M.**

**The Barbara George Conference Room**  
**1125 Tamalpais Avenue, San Rafael, CA 94901**

**Agenda Page 1 of 1**

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. 9.12.16 Meeting Minutes (Discussion/Action)
5. Resolution 2016-07 Approving Power Purchase and Sale Agreement Between MCE and Desert Harvest, LLC (Discussion/Action)
6. Resolution 2016-08 Approving Power Purchase and Sale Agreement Between MCE and Antelope Expansion Phase 2, LLC (Discussion/Action)
7. Presentation on MCE Load Balance Visualizer (Discussion)
8. Committee Member & Staff Matters (Discussion)
9. Adjourn



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**MCE  
TECHNICAL COMMITTEE MEETING  
September 12, 2016  
10:00 A.M.**

**The Barbara George Conference Room  
1125 Tamalpais Avenue, San Rafael, CA 94901**

**Roll Call**

**Present:**

Ford Greene, Town of San Anselmo  
Greg Lyman, City of El Cerrito  
Emmett O'Donnell, Town of Tiburon  
Kate Sears, County of Marin, Chair  
Ray Withy, City of Sausalito

**Absent:** Kevin Haroff, City of Larkspur

**Staff:** Greg Brehm, Director of Power Resources  
Kirby Dusel, Resource Planning & Renewable Energy Programs  
David McNeil, Finance and Project Manager  
Dawn Weisz, Chief Executive Officer

**Action taken:**

**Agenda Item #4 – Approval of Minutes from 6.13.16 Meeting (Discussion/Action)**

ACTION: It was M/S/C (Withy/Lyman) to approve minutes from 6.13.16 meetings. Motion carried by 4-0 roll call vote: (Abstain: O'Donnell) (Absent: Haroff).

**Agenda Item #5 –Power Purchase and Sale Agreement with Recurrent - RE Tranquillity 8 Rojo LLC for Renewable Energy Supply (Discussion/Action)**

ACTION: It was M/S/C (O'Donnell/Greene) to approve Power Purchase and Sale Agreement with Recurrent - RE Tranquillity 8 Rojo LLC for Renewable Energy Supply. Motion carried by 5-0 roll call vote: (Absent: Haroff).

**Agenda Item #6 – Power Purchase and Sale Agreements with Little Bear Solar 1, LLC, Little Bear Solar 3, LLC, Little Bear Solar 4, LLC and Little Bear Solar 5, LLC (Discussion/Action)**

ACTION: It was M/S/C (O'Donnell/Lyman) to approve Power Purchase and Sale Agreements with Little Bear Solar 1, LLC, Little Bear Solar 3, LLC, Little Bear Solar 4, LLC and Little Bear Solar 5, LLC. Motion carried by 5-0 roll call vote: (Absent: Haroff).

**Agenda Item #7 – Green-E Audit Report for CY 2015 Deep Green Sales (Discussion/Action)**

ACTION: It was M/S/C (O'Donnell/Greene) to approve Green-E Audit Report for CY 2015 Deep Green Sales. Motion carried by 5-0 roll call vote: (Absent: Haroff).

**Agenda Item #8 – Adjusting Time of Technical Committee Meeting (Discussion/Action)**

**No action was taken. Staff will provide meeting options and send to Committee members.**

**The meeting was adjourned to the next scheduled meeting on October 3, 2016.**

\_\_\_\_\_  
Kate Sears, Chair

**ATTEST:**

\_\_\_\_\_  
Dawn Weisz, Chief Executive Officer



November 3, 2016

TO: Marin Clean Energy Technical Committee

FROM: Greg Brehm, Director of Power Resources

RE: Resolution 2016-07 Approving Power Purchase and Sale Agreement between MCE and Desert Harvest, LLC (Agenda #05)

ATTACHMENTS: A. Resolution 2016-07 Approving Power Purchase and Sale Agreement between MCE and Desert Harvest, LLC  
B. Draft Power Purchase and Sale Agreement between MCE and Desert Harvest, LLC

Dear Technical Committee Members:

---

**SUMMARY:**

As a result of this year's Open Season Procurement Process for renewable energy, staff received an offer from EDF Renewable Energy ("EDF") for a power purchase agreement ("PPA" or "Agreement") for output from a new solar photovoltaic project located in the Colorado Desert of Riverside County, CA. The facility will be developed by Desert Harvest, LLC, a wholly-owned subsidiary of San Diego-based EDF.

The Desert Harvest solar generation facility will have an installed capacity between 80 and 150 MW (AC). The final capacity shall be decided by MCE by the end of 2018, and such optionality provides significant value to MCE by allowing for consideration of future market conditions, potential service territory expansion, and procurement needs and commitments. The Desert Harvest project is expected to achieve commercial operation by December 1, 2020. Staff reviewed this offer with the Ad Hoc Contracts Committee on August 29, 2016. The Ad Hoc Contracts Committee recommended moving forward with contract negotiations, and staff negotiated the attached draft PPA with EDF for the purchase of energy, capacity and renewable attributes. This project is particularly interesting due to its attractive price, optionality regarding final project capacity, and EDF's strong track record in developing renewable energy generation projects.

Renewable energy volumes produced by the facility will complement MCE's existing power supply with output from a California-located generating project. The timing of deliveries will fill annual net short positions identified in MCE's Integrated Resource Plan, specifically contributing to replacement of volumes previously delivered under the Shell Energy North America (SENA) Agreement and the RE Kansas PPA, both of which expire in December 2017. Additional information is provided below regarding the prospective counterparty.

Staff would like to direct special consideration to the potential impact of negative California Independent System Operator (CAISO) pricing for solar generation delivered to the grid in areas saturated with solar development. Staff considered the impacts of negative CAISO revenue and, in order to reduce MCE's exposure to adverse Real Time market conditions (which are more frequently negative than Day Ahead market prices), stipulated that energy deliveries under this PPA are traded in the Day Ahead market.

### **Background on EDF Renewable Energy**

- A wholly-owned subsidiary of EDF Group that develops, owns, and operates utility-scale wind, solar, bioenergy, and storage facilities in North America
- Headquartered in San Diego, CA with regional offices throughout Canada, Mexico, Chile, and the United States
- Total portfolio of 16.9 GW of projects, 1 GW of which is solar.

### **Contract Overview – Desert Harvest**

- Project: will consist of 80 – 150 MW solar PV with 36% capacity factor – capable of supplying the annual electric needs of up to 78,000 MCE residential customers.
- Location: Colorado Desert, between Indio and Blythe, CA (Riverside County), in the service territory of either Southern California Edison or Imperial Irrigation District.
- Project will utilize technologically proven ground mount solar PV technology
- Guaranteed commercial operation date: December 1, 2020
- Contract term: 20 years
- Delivery profile: Peaking
- Expected annual energy production: up to approximately 490,000 MWhs, including all capacity and environmental attributes associated therewith
- Guaranteed energy production: 80% of projected annual deliveries
- Energy price: fixed energy price applicable to each year of contract
- No credit/collateral obligations for MCE
- MCE to receive financial compensation in the event of Seller's failure to successfully achieve certain development milestones
- MCE to receive financial protection from costs associated with changes in law and compliance therewith

### **Summary:**

The Desert Harvest project is a good fit for MCE's resource portfolio based on the following considerations:

- The project size supports MCE's expansion and future renewable energy requirements
- The flexibility in project size provides MCE with optionality to best meet future procurement needs related to potential expansion and market conditions
- Timing of initial energy deliveries under the agreement is aligned with planned reduction in renewable energy deliveries under the RE Kansas and SENA Agreements
- The project is being developed by an experienced team, which is currently supplying power from many projects to SCE, PG&E, and other utilities throughout North America
- The project is located within California and meets the highest value renewable portfolio standards category ("Bucket 1")
- Energy from the project is competitively priced

**Recommendation:** Authorize, via Resolution 2016-07, execution of Power Purchase and Sale Agreement with Desert Harvest, LLC for renewable energy supply.

**RESOLUTION NO. 2016-07**

**A RESOLUTION OF THE TECHNICAL COMMITTEE OF  
MARIN CLEAN ENERGY APPROVING POWER PURCHASE AGREEMENT  
BETWEEN MARIN CLEAN ENERGY AND DESERT HARVEST, LLC**

**WHEREAS**, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, the MCE Board of Directors delegated approval authority for power purchase agreements to the MCE Technical Committee at its meeting on May 19, 2016; and;

**WHEREAS**, MCE, via the 2015 Integrated Resource Plan, identified procurement policies and needs to meet future renewable energy requirements and, via the 2016 Open Season process, solicited offers for long-term renewable energy commitments to meet said procurement needs;

**WHEREAS**, Desert Harvest, LLC participated in MCE's 2016 Open Season solicitation and submitted an offer that warranted inclusion in MCE staff's review with its Ad Hoc Contracts Committee;

**WHEREAS**, MCE's Ad Hoc Contracts Committee reviewed the offer submitted by Desert Harvest, LLC and directed MCE staff to further pursue a Power Purchase Agreement with Desert Harvest, LLC;

**WHEREAS**, MCE and Desert Harvest, LLC have jointly negotiated a mutually agreeable Power Purchase Agreement for 80 to 150 MW of long-term renewable energy, capacity, and associated attributes; and

**WHEREAS**, MCE and Desert Harvest, LLC now desire to enter into said Power Purchase Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, by the Technical Committee of MCE that the MCE Technical Committee authorizes execution of the Power Purchase and Sale Agreement between MCE and Desert Harvest, LLC for 80 to 150MW Solar Power.

**PASSED AND ADOPTED** at a regular meeting of the MCE Technical Committee on this 3rd day of November 2016, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

**ATTEST:**

\_\_\_\_\_  
CHAIR, MCE TECHNICAL COMMITTEE

\_\_\_\_\_  
SECRETARY, MCE



**REDACTED VERSION**

MCE DRAFT

10/27/2016

**POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

**Seller:** Desert Harvest, LLC, a Delaware limited liability company

**Buyer:** Marin Clean Energy, a California joint powers authority

**Description of Facility:** A solar generation project to be selected by Seller from Exhibit A

**Guaranteed Capacity:** 80 MW AC

**Guaranteed Commercial Operation Date:** December 1, 2020

**Milestones:**

<b>Identify Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA [ ] Cat Ex, [ ]Neg Dec, [ ]Mitigated Neg Dec, [x]EIR	January 1, 2020
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Complete
<b>Executed Interconnection Agreement</b>	January 1, 2018
<b>Outside Date for Capacity Expansion Notice</b>	December 31, 2017
<b>Construction Start</b>	January 5, 2020
<b>Initial Synchronization</b>	August 1, 2020
<b>Commercial Operation Date</b>	December 1, 2020

**Delivery Term:** The period for Product delivery will be for 20 Contract Years.

**Contract Price:** [Redacted.]

**REDACTED VERSION**

MCE DRAFT

10/27/2016

**Product:**

Energy

Green Attributes

Portfolio Content Category 1

Portfolio Content Category 2

Portfolio Content Category 3

Capacity Attributes

**Deliverability:**

Energy Only Status

Full Capacity Deliverability Status

a) If Full Capacity Deliverability Status is selected, provide the Expected FCDS Date: December 1, 2020.

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

**REDACTED VERSION**

MCE DRAFT

10/27/2016

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**Scheduling Coordinator:** Seller

**Development Security:** [Redacted.]

**Performance Security:** [Redacted.]

**Damage Payment:** [Redacted.]

**Notice Addresses:**

Seller:

Desert Harvest, LLC  
c/o EDF Renewable Development, Inc.  
15445 Innovation Drive  
San Diego, CA 92128  
Attention: Blaine Sundwall  
Telephone: (858) 521-3300  
Fax: (858) 521-3333

**REDACTED VERSION**

MCE DRAFT

10/27/2016

Email: [Blaine.Sundwall@edf-re.com](mailto:Blaine.Sundwall@edf-re.com)

With a copy to:

Desert Harvest, LLC  
c/o EDF Renewable Development, Inc.  
15445 Innovation Drive  
San Diego, CA 92128  
Attention: General Counsel  
Telephone: (858) 521-3300  
Fax: (858) 521-3333  
E-mail: robert.miller@edf-re.com

Scheduling:

Desert Harvest, LLC  
c/o EDF Renewable Energy, Inc.  
15445 Innovation Drive  
San Diego CA 92128  
Attention: Asset Manager  
Fax: (858) 521-3333

Buyer:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Attention: Greg Brehm, Director of Power Resources  
Fax: (415) 459-8095  
Phone: (415) 464-6037  
Email: gbrehm@mceCleanEnergy.org

With a copy to:

Troutman Sanders LLP  
100 SW Main, Suite 1000  
Portland, Oregon 97204  
Attention: Stephen Hall  
Fax: (503) 290-2405  
Phone: (503) 290-2336  
Email: stephen.hall@troutmansanders.com

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

**SELLER**

**BUYER**

**Desert Harvest, LLC**

**Marin Clean Energy**

By: EDF Renewable Development, Inc.,  
its Manager

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

By: \_\_\_\_\_  
MCE Chairperson

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

By: \_\_\_\_\_  
MCE Executive Officer

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

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**Exhibits:**

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Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Contract Price
Exhibit D	Emergency Contact Information
Exhibit E	Milestone Schedule
Exhibit F	Guaranteed Energy Production Damages Calculation
Schedule F-1	Expected Energy
Exhibit G	Form of Letter of Credit
Exhibit H	Milestone Progress Reporting Form
Exhibit I	Form of Guaranty
Exhibit J	Form of Construction Start Certificate
Exhibit K	Form of Commercial Operation Date Certificate
Exhibit L	Form of Installed Capacity Certificate
Exhibit M	Form of Capacity Expansion Notice

## POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2016 the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

### RECITALS

WHEREAS, Seller intends to develop, design, construct, own and operate one or more solar photovoltaic systems located in Riverside County, California in the locations and with the descriptions further provided in Exhibit A; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Guaranteed Capacity, all Green Attributes related to the generation of such Energy, and all Capacity Attributes;

WHEREAS, the Parties have agreed that Seller shall have the right to select from Exhibit A the Facility providing the Guaranteed Capacity following the Effective Date of this Agreement; and

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:

### ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.13.

“**Adequate Assurances**” means (a) cash, or (b) a Letter of Credit, in each case, in the amount determined by Seller in accordance with Section 8.10.

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

“**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, “control” (including, with correlative meanings, the terms “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.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet, any exhibits, schedules and any written supplements hereto, any designated collateral, credit support or similar arrangement between the Parties.

“**Amendment Effective Date**” has the meaning set forth in the Capacity Expansion Notice.

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

“**Bankrupt**” 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 sixty (60) 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.

“**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. local time for the Party sending a Notice, or payment, or performing a specified action.

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

“**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 electric energy produced by the Facility less Station Use.

“**CAISO Grid**” has the same meaning as “CAISO Controlled Grid” as defined in 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), and 350 (2015), 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

and deliver to the CAISO grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“**Capacity Expansion Notice**” means a Capacity Expansion Notice substantially in the form of Exhibit M.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the Facility has been constructed, 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 Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**Change in Law**” means a change in any federal, state, local or other law (including any RPS Law), resolution, standard, code, rule, ordinance, directive, tariff, policy, protocol, regulation, order, judgment, decree, ruling, determination, permitting conditions, certification conditions, authorization, approval of a Governmental Authority, the CAISO or WREGIS, including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, policy, protocol, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval, which is binding on a Party, the Parties, or the Facility or any of the Products sold therefrom, including with respect to CAISO Scheduling Protocols, Green Attributes, the provision of Capacity Attributes, and Resource Adequacy Benefits.

“**Change of Control**” means a transaction, after the Effective Date, in which any Person acquires more than fifty percent (50%) of the membership interests of Seller which are not otherwise held by the tax equity investors; *provided, however*, that a Change of Control with respect to Seller, shall not include (a) any transaction or series of transactions in which the membership interests in Seller, or owner of equity in Seller, are issued or transferred to an Affiliate of Seller for the purposes of an internal reorganization; (b) to another Person solely for the purpose of a tax equity or other financing; or (c) any sell-down or syndication of the non-tax equity interest in a tax equity financing provided that an Affiliate of Seller continues to have the power to control the management of Seller.

“**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) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 19.1.

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

**“Contract Price”** means the amount identified in Exhibit C, as it may be adjusted pursuant to Section 3.3.

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

**“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 Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

**“Cover Sheet”** means the cover sheet to this Agreement, completed by Seller and incorporated into this Agreement.

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

**“CPUC”** means the California Public Utilities Commission, or successor entity.

**“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.

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

(a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including (i) any situation that affects normal function of the electric system including 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 Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by the CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s

transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner.

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

**"Damage Payment"** has the meaning set forth on the Cover Sheet.

**"Day-Ahead LMP"** has the meaning set forth in the CAISO Tariff.

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

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

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

**"Delivery Limit"** is defined in Section 3.3(b).

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

**"Delivery Point"** means first point of interconnection with the CAISO Grid at the Red Bluff substation; *provided* that the Parties can change the Delivery Point upon mutual agreement.

**"Delivery Term"** shall mean the period of twenty (20) Contract Years commencing on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement; provided, however, that if Buyer elects to purchase Test Energy from Seller pursuant to Section 3.7, the length of the Delivery Term shall be extended, on a day-for-day basis, for the number of days between (i) the date Buyer elects to purchase such Test Energy and (ii) the Earliest Acceptable COD.

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

**"Development Security"** means (a) cash, or (b) a Letter of Credit, in each case, in the amount set forth in Section 8.7.

**"Dispatch Instruction"** has the meaning set forth in the CAISO Tariff.

**"Earliest Acceptable COD"** has the meaning set forth in Exhibit B.

**"Early Termination Date"** has the meaning set forth in Section 11.2.

**"EDF Credit Conditions"** means that (i) Électricité de France S.A. owns, directly or indirectly, at least fifty percent (50%) of the issued and outstanding equity ownership interests in EDF EN and (ii) EDF EN has a tangible net worth of at least €1,750,000,000.00. [*NTD – This provision is still under review by MCE Credit and Legal .*]

“**EDF EN**” means EDF Energies Nouvelles, a French corporation.

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

“**Electrical Losses**” means all applicable losses, including any transmission or transformation losses between the CAISO Approved Meter and the Delivery Point.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**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 metered electrical energy, measured in MWh, which is produced by the Facility.

“**Event of Default**” means either a Seller Default or Buyer Default as specified in Article 11.

“**Expansion Capacity**” means the amount of Guaranteed Capacity specified in the First Amendment to Power Purchase and Sale Agreement entered that exceeds 80 MW AC.

“**Expansion Multiplier**” means the amount equal to  $(80 + X) / 80$ , where X is the Expansion Capacity.

“**Expected Energy**” has the meaning set forth in Section 4.6.

“**Expected FCDS Date**” means the date set forth in the deliverability section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“**Expected Net Qualifying Capacity**” means an estimate of the amount of Net Qualifying Capacity the Facility would have received had it obtained deliverability according to the deliverability type selected on the Cover Sheet, as determined in accordance with Exhibit F-1.

“**Facility**” means the solar photovoltaic generating facility selected by Seller from Exhibit A pursuant to Section 2.2.

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

“**First Amendment to Power Purchase and Sale Agreement**” means the First Amendment to Power Purchase and Sale Agreement in the form attached as Annex A to the Capacity Expansion Notice.

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



**“Forced Outage”** means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.7(a).

**“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 and/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.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

**“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*, that “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 displacement of fossil-fuel 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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal

or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the 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 and/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.

**"Guaranteed Capacity"** means 80 MW AC capacity, as measured as the sum of the Inverter Capacity of all the inverter units of the Facility.

**"Guaranteed Commercial Operation Date"** has the meaning set forth in Exhibit B.

**"Guaranteed Construction Start Date"** has the meaning set forth in Exhibit B.

**"Guaranteed Energy Production"** has the meaning set forth in Section 4.6.

**"Guarantor"** means, as applicable to Seller, EDF EN (so long as the EDF Credit Conditions remain satisfied), or a Person with an Investment Grade Credit Rating who has issued a Guaranty for Seller. [*NTD – This provision is still under review by MCE Credit and Legal.*]

**"Guaranty"** means, (i) if the Guarantor is EDF EN, a guaranty for the benefit of Buyer in the form attached hereto as Exhibit I, and (ii) if the Guarantor is another Person, a guaranty for the benefit of Buyer in a form reasonably acceptable to Buyer.

**"Imbalance Energy"** means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.

**"Indemnified Party"** has the meaning set forth in Section 17.1.

**"Indemnifying Party"** has the meaning set forth in Section 17.1.

**"Initial Synchronization"** means the initial delivery of Energy from the Facility to the Delivery Point.

**“Installed Capacity”** means, at a given time, the sum of the actual generating capacity of the Facility, measured as the sum of the Inverter Capacity of all the inverter units of the Facility at such time, as evidenced by a certificate substantially in the form attached as Exhibit L hereto provided by Seller to Buyer

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

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

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, 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 order to meet the terms and conditions of this Agreement.

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

**“Inverter Capacity”** means the manufacturer’s output rating of the electrical current inverter consistent with Prudent Operating Practice and accepted industry standards, as indicated on the nameplate physically attached to such inverter.

**“Investment Grade”** means a Credit Rating of BBB and Baa2 or higher by S&P or Moody’s, respectively, provided that if the Credit Ratings by S&P and Moody’s are not equivalent, then the lower of the Credit Ratings shall control for purposes of determining whether the Person’s Credit Rating is Investment Grade.

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

**“Lender”** means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt, tax equity or other 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, 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 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 acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a tax equity transaction or leasing transaction (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 or a foreign bank with a U.S. branch 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 the form attached hereto as Exhibit G.

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

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the non-defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

“**Lost Output**” has the meaning set forth in Exhibit F.

“**Maverick Solar, LLC**” is an Affiliate of Seller and the owner of the Maverick Solar facility described in Exhibit A.

“**Metered Energy**” means the electric energy expressed in MWh, as recorded by the CAISO Approved Meter(s), and net of all Electrical Losses.

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

“**Milestone Progress Report**” has the meaning set forth in Section 2.4.

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

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour.

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

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

“**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, facsimile or electronic messaging (e-mail).

**“Participating Transmission Owner”** or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison Company.

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

**“Performance Measurement Period”** has the meaning set forth in Section 4.6.

**“Performance Security”** means (i) cash, (ii) a Guaranty, (iii) a Letter of Credit or (iv) any combination thereof, in each case, in the amount specified on the Cover Sheet and set forth in Section 8.8.

**“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.

**“Physical Trade”** has the meaning set forth in the CAISO Tariff.

**“Planned Outage”** means the removal from service of ten percent (10%) or more of the Facility at any one time, which removal is planned in advance for operation and maintenance service and is not the result of a Force Majeure Event.

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

**“Portfolio Content Category”** means PCC1, PCC2 or PCC3, as applicable.

**“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 Content Category 2”** or **“PCC2”** 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** 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)(3), as may be amended from time to time or as further defined or supplemented by Law.

“**Product**” means, commencing on the first day of the Delivery Term, (a) Energy, (b) Green Attributes and (c) Capacity Attributes.

“**Prudent Operating Practice**” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“**Qualified Assignee**” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s guarantor or other credit support) under this Agreement.

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

“**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 3.9(b).

“**RA Guarantee Date**” means the earlier of (a) Seller receiving Full Capacity Deliverability Status or (b) December 1, 2020.

“**RA Shortfall Month**” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.9(b).

“**RA Shortfall Period**” means, if the Full Capacity Deliverability Status has not been achieved by December 1, 2020, the period of consecutive calendar months that starts with December 1, 2020 and ends on the earlier of the (i) date that Full Capacity Deliverability Status has been achieved and (ii) the end of the Delivery Term.

“**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.

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

“**Remedial Action Plan**” has the meaning in Section 2.5.

“**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 Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, whether allocated through an Interim Deliverability Status or Full Capacity Deliverability Status, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

**“Resource Adequacy Requirements”** or **“RAR”** means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

**“RPS Law”** means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code §25740 through §25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC, and as all of the foregoing may be promulgated, implemented, or amended from time to time, and any successor laws or regulations.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

**“Schedule”** means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“**Scheduled Energy**” means the sum of (x) the amount of Energy associated with a Physical Trade (adjusted to reflect any reduction in the event a Converted Physical Trade is completed) between Seller and Buyer in the Day-Ahead Market entered into in accordance with Section 4.1(b) plus (y) the amount of Energy associated with or included in any completed Converted Physical Trade plus (z) the amount of Energy which would have been associated with or included in a Physical Trade or Converted Physical Trade but for a rejection or invalidation of such Physical Trade or Converted Physical Trade due to the actions or inactions of Buyer.

“**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.

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

“**Seller Curtailment**” means curtailments or reductions in the generation of Facility (in whole or in part) caused by: (a) a reduction in forward schedules; (b) a real-time Dispatch Instruction to return to Schedule; (c) a real-time Dispatch Instruction to reduce deliveries of Facility Energy pursuant to an economic bid; (d) an order for the Facility to be curtailed for any other reason at Seller’s discretion.

“**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 does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the five-minute time period over which the CAISO settles cost compensation amounts or deviations in Generation (as defined in the CAISO Tariff) and Demand (as defined in the CAISO Tariff) in the real-time market.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date Certificate to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit J to Buyer.

“**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.



**“Station Use”** means:

(a) The electric 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

(b) The electric energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

**“System Emergency”** means any condition that: (a) requires, as determined and declared by CAISO or the PTO, 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 Delivery Point, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

**“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.

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

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

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

**“Transmission Provider”** means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

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

**“WECC”** means the Western Electricity Coordinating Council or its successor.

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

**“WREGIS Certificates”** has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires: 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;

(a) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(b) 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;

(c) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

(d) 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;

(e) a reference to a Person includes that Person’s successors and permitted assigns;

(f) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(g) 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;

(h) 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;

(i) references to any amount of money shall mean a reference to the amount in United States Dollars;

(j) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(k) 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

(l) 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.

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

#### **2.1 Contract Term.**

(a) 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 and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) 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 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Identification of Facility.** On or before December 1, 2019, Seller shall select from Exhibit A the specific solar photovoltaic electricity generating facility that will provide Product to Seller under this Agreement (the “**Facility**”) and provide a description of the Facility in a Notice to Seller. If the Facility selected by Seller is the Maverick Solar facility, this Agreement shall be assigned to Maverick Solar, LLC in accordance with Section 14.2. Buyer acknowledges that the Facility will be separately metered, but may share certain facilities, including the project substation, transmission intertie with the CAISO Grid or Transmission System (as the case may be) and the Interconnection Agreement and other rights and permits with other solar photovoltaic systems under development on or adjacent to the Site. Buyer shall cooperate with Seller, to execute such documents as reasonably requested by Seller in order to memorialize the sharing of facilities, permits, the Interconnection Agreement and other rights between the Facility and other solar photovoltaic systems under development by Seller on or adjacent to the Site; *provided, however*, that all costs and expenses (including reasonable attorney’s fees) incurred by Buyer in connection with the execution of such documents shall be borne by Seller.

2.3 **Conditions Precedent to Purchases of Product.** Subject to Section 3.5, Buyer shall have no obligation to purchase the Product under this Agreement until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

- (a) Seller shall have selected the Facility pursuant to Section 2.2;
- (b) Seller shall have delivered to Buyer a completion certificate in the form of Exhibit K from a licensed professional engineer showing that the Facility has achieved Commercial Operation;
- (c) Seller shall have delivered to Buyer a written acknowledgement from the PTO that the Facility has achieved Commercial Operation;
- (d) A Participating Generator Agreement, a Meter Service Agreement, and a Scheduling Coordinator Agreement have been executed and delivered by Seller to CAISO, such agreements are in full force and effect, and a copy of each agreement has been delivered to Buyer;
- (e) An Interconnection Agreement has been executed and delivered to the PTO, the Interconnection Agreement is in full force and effect and a copy of the Interconnection Agreement has been delivered to Buyer;
- (f) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Plan of Service Reliability Network Upgrades (as defined in the Interconnection Agreement and required by CAISO to interconnect the Facility) and satisfaction of all other requirements of the Interconnection Agreement;
- (g) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility have been obtained and all conditions thereof that are material to Seller's obligations under this Agreement have been completed and remain in full force and effect;
- (h) Seller has received the requisite pre-certification of the CEC Certification and Verification for the Facility (and will reasonably expect to receive, in no more than twelve (12) months from the Commercial Operation Date, the final CEC Certification and Verification);
- (i) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE 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 or have completed any other requirements to enable Buyer to fulfill its RPS requirements; and
- (j) Seller has paid Buyer for all Commercial Operation Delay Damages owing under this Agreement, if any.

2.4 **Progress Reports.** Seller shall prepare and submit to Buyer a report, in the form of Exhibit H, on progress of the Milestones, (a) from the Effective Date until the start of construction, within 15 days of the end of each calendar quarter, and (b) from the start of construction until the Commercial Operation Date, within 15 days of the end of each calendar month (each such report, a “**Milestone Progress Report**”). Such Milestone Progress Reports shall be for the Desert Harvest facility, unless the Maverick Solar facility is selected in accordance with Section 2.2. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such Milestone Progress Reports and discuss Seller’s construction progress. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.5 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure or Buyer default, Seller shall submit to Buyer, within ten (10) Business Days of such 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, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

2.6 **Capacity Expansion.** Buyer may at its election and without any obligation, but no later than December 31, 2017, issue an executed Capacity Expansion Notice to Seller designating an amount of Expansion Capacity to be provided by Seller at the same Contract Price, in any amount up to but not exceeding 70 MW AC. Subject to the last sentence in this Section 2.6, this Agreement shall, as of the date of Buyer’s execution of the Capacity Expansion Notice and without further acknowledgement from Seller, automatically be deemed amended in accordance with the attached First Amendment to Power Purchase and Sale Agreement. Notwithstanding the foregoing, in lieu of providing the Expansion Capacity from the Facility, Seller has the right, but not the obligation, to send Notice to Buyer within ten (10) Business Days following receipt of the executed Capacity Expansion Notice of Seller’s intent to provide the Expansion Capacity from a facility designated in Exhibit A other than the Facility (i.e., Maverick or Desert Harvest) and (a) if Seller presents Buyer with a replacement power purchase agreement from such facility at the same Contract Price as this Agreement, and otherwise subject to the same terms and conditions of this Agreement, as reasonably determined by Buyer, but accounting for differences in changes to Development Security, Performance Security, Damage Payment, Guaranteed Capacity and Expected Energy to reflect the Expansion Capacity amount and quantities and (b) the Parties enter into such agreement, the First Amendment to Power Purchase Agreement shall not be effective and shall be deemed void ab initio.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any elements thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including a Planned Outage or Forced Outage of the Facility, a Force Majeure Event, a Seller Curtailment or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except as provided in Section 3.9(b) below. Seller shall have the right to curtail deliveries of Product by Seller to the Delivery Point.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes attributable to the Metered Energy produced by the Facility.

3.3 **Compensation.**

(a) Seller shall be compensated for each MWh of Scheduled Energy or Metered Energy as follows:

(i) For all Scheduled Energy up to the amount of Metered Energy for the applicable Settlement Period, the Contract Price;

(ii) for Scheduled Energy amounts in excess of Metered Energy for the applicable Settlement Period, the Day-Ahead LMP at the Facility PNode for the applicable Settlement Period; and

(iii) for Metered Energy amounts in excess of Scheduled Energy for the applicable Settlement Period, an amount equal to the Contract Price minus the greater of (1) the Real-Time LMP at the Facility PNode or (2) \$0/MWh.

(b) **Excess Deliveries.** If during a Contract Year, there is Metered Energy in excess of one hundred fifteen percent (115%) of the Expected Energy for such Contract Year (the "**Delivery Limit**"), then for all Metered Energy after the day in which the Delivery Limit is reached, Seller shall be compensated as follows:

(i) For all Scheduled Energy up to the amount of Metered Energy for the applicable Settlement Period, the lesser of (A) seventy-five percent (75%) of the Contract Price or (B) the Day-Ahead LMP at the Facility PNode for the applicable Settlement Period;

(ii) for Scheduled Energy amounts in excess of Metered Energy for the applicable Settlement Period, the Day-Ahead LMP at the Facility PNode for the applicable Settlement Period; and

(iii) for Metered Energy in excess of the amount of Scheduled Energy for the applicable Settlement Period, an amount equal seventy-five percent (75%) of the Contract Price minus the greater of (A) the Real-Time LMP at the Facility PNode or (B) \$0/MWh.

3.4 **Imbalance Energy.** Buyer and Seller recognize that the nature of the Product from this Facility is “as available” and the amount of Metered Energy will deviate from the amount of Scheduled Energy and that to the extent there are such deviations, and costs or revenues from such imbalances, they shall be solely for the account of Seller. Notwithstanding anything to the contrary in this Section 3.4, if Buyer’s actions cause CAISO sanctions, penalties, then the cost of such sanctions or penalties shall be Buyer’s responsibility.

3.5 **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.

3.6 **Green Attributes.**

(a) Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, 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.

(b) The Parties acknowledge that Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. 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 such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(c) 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, as set forth

above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** Notwithstanding the conditions precedent identified in Section 2.3, if and to the extent the Facility generates Test Energy, Buyer shall have an option to purchase all, but not less than all, of the Test Energy that is available from the Facility prior to the Delivery Term. No less than fourteen (14) days prior to the first day on which Test Energy will be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. Buyer shall have fourteen (14) days to determine whether it will exercise the option to purchase Test Energy. Buyer's option to purchase Test Energy shall terminate if either: (i) Buyer fails to exercise the option to purchase Test Energy within the above fourteen (14) day period or (ii) Buyer fails to respond to Seller's Notice within the above fourteen (14) day time period. If Buyer exercises its option to purchase Test Energy, Seller shall deliver, and Buyer shall purchase at the Contract Price, all Test Energy available from the Facility. The Parties acknowledge and agree that following termination of Buyer's option, Seller has no obligation to sell or deliver Test Energy to Buyer prior to the commencement of the Delivery Term, and Seller may market, sell and deliver all or portions of the Test Energy from the Facility to one or more third parties. As compensation for such Test Energy, Buyer shall pay Seller an amount equal to (i) if the Facility has qualified for Resource Adequacy Benefits, the Contract Price, or (ii) if the Facility has not qualified for Resource Adequacy Benefits, seventy-five percent (75%) of the Contract Price. For the avoidance of doubt, the conditions precedent in Section 2.3 are not applicable to the Parties' obligations under this Section 3.7.

3.8 **Capacity Attributes.** Seller has performed, or caused to be performed, both a Phase I Interconnection Study and a Phase II Interconnection Study (each as defined in the CAISO Tariff). Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost of any Delivery Network Upgrades (as defined in the CAISO Tariff) associated with obtaining such Full Capacity Deliverability Status but only to the extent such costs are allocated to Seller pursuant to the CAISO Tariff. For the avoidance of doubt, to the extent Seller is entitled to any reimbursement for Delivery Network Upgrades or Reliability Network Upgrades, such reimbursements shall be for Seller's own account.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Within thirty (30) days after the Commercial Operation Date, Seller or Seller's SC shall submit a request to the CAISO's Customer Interface for Resource Adequacy (CIRA) for a Net Qualifying Capacity (as defined in the CAISO Tariff) determination. Seller shall take all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

3.9 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if



Seller is unable to obtain the deliverability type selected on the Cover Sheet by the RA Guarantee Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the RA Guarantee Date and throughout the Delivery Term, in each month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the current price for CPM Capacity as listed in Section 43.7.1 of the CAISO Tariff or its equivalent successor (the “**Multiplier**”), expressed in \$/kW-month; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any replacement RA capacity is delivered to Buyer no later than 60 days prior to the CPUC operating month for the purpose of monthly RA reporting. Should the price for CPM Capacity cease to be published by CAISO and no equivalent successor is published, the Multiplier shall be equal to the last price for CPM Capacity listed in the CAISO Tariff and escalated by two percent (2%) every twelve (12) months thereafter. In any event, the Multiplier may not exceed \$120/kW-year.

3.10 **CEC Certification and Verification.** Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Seventh Edition* (or its successor). 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.

3.11 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’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.

3.12 **California Renewables Portfolio Standard.** Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time. 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.

3.13 **Compliance Expenditure Cap.** In the event Change in Law after the Effective Date amends EIRP, amends CAISO’s market rules in a manner that materially increases Sellers costs in complying with this Agreement, or impacts the ability of the Facility to remain RPS

Compliant or to maintain its CEC Certification and Verification, or that causes the Products sold to Buyer to no longer be PCC1, Seller will use commercially reasonable efforts to address the Change in Law, in order to continue to satisfy Seller's obligations under this Agreement ("**Compliance Actions**"), *provided* that (a) Seller shall take all reasonable actions that do not involve the expenditure of money, and (b) Seller shall not be required to spend more than [**Redacted.**] in any Contract Year, or [**Redacted.**] in the aggregate over the Contract Term (the "**Compliance Expenditure Cap**") to satisfy Seller's obligations. For the avoidance of doubt, such amounts shall be used by Seller solely for the purpose of modifying the Facility (as opposed to other facilities) or for costs incurred by Seller to allow the Facility to comply with such Change in Law or to render the Products in compliance with the obligations under this Agreement. Seller shall remain obligated to satisfy Seller's compliance obligations that existed prior to the Change in Law.

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.

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 (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) **Energy.** The Energy generated by the Facility shall be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator).

(b) **Scheduled Energy.** The Parties shall perform the following procedures with respect to Scheduled Energy:

(i) **Physical Trades.** Before the deadline for submission of ISTs in the Day-Ahead Market, Seller and Buyer shall submit and match, or cause their SCs to submit and match, a Physical Trade "from" Seller's SC "to" Buyer's SC at the Delivery Point. Such Physical Trade shall specify the MW amounts for the time periods as set forth in the Day-Ahead Schedule submitted by Seller to the CAISO in the Day-Ahead Market. Such Physical Trades shall be entered in the Day-Ahead Market. With regard to such Physical Trades, Buyer shall perform (or cause to be performed) such actions as necessary to submit and validate a Physical Trade by the "to" SC,

and Seller shall perform (or cause to be performed) such actions as necessary to match and validate a Physical Trade by the “from” SC in a Physical Trade. Seller shall be responsible for all charges, costs and penalties and entitled to all payments, if any, associated with delivery of Scheduled Energy under any Inter-SC Trade. Buyer shall be responsible for all charges, costs and penalties and entitled to all payments, if any, associated with the receipt and transfer of Scheduled Energy under any Inter-SC Trade. Submitting and matching of Physical Trades shall be performed in accordance with the CAISO Business Practice Manual for Market Instruments (including section 9 thereof) or such other appropriate CAISO business practice guidelines.

(ii) Settlement If IST Is Rejected or Unavailable. Without limiting the Parties’ rights and obligations set forth in Section 3.3, if for any Settlement Period (x) a Physical Trade is rejected or invalidated due to the actions or inactions of either Party, or (y) the process under the CAISO Tariff governing ISTs and Physical Trades is unavailable or not functioning due to a Force Majeure event, change to or suspension of the CAISO Tariff, or otherwise, then, in either of the foregoing cases (x) or (y): Seller shall pay to Buyer an amount computed hourly by multiplying the Day-Ahead LMP at the Delivery Point times the corresponding Scheduled Energy for that Settlement Period, provided, that if such calculation results in a negative value, Buyer shall pay to Seller the absolute value of such negative value. If after payment is made as provided herein, the Physical Trade is validated or the transaction does become subject to the IST process, any payment made pursuant to this Section 4.1(b)(ii) shall be refunded as appropriate to accomplish the purposes of this Agreement.

(c) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, 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.

#### 4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Scheduled Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges associated with Scheduled Energy at and from the Delivery Point and Seller shall be responsible for all charges associated with the delivery of the Product to the Delivery Point, including penalties, Negative LMPs, ratcheted demand or similar charges, including imbalance charges whether instructed or uninstructed and congestion and loss charges associated with differences between Scheduled Energy and Metered Energy up to the Delivery Point.

(b) 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 WREGIS.

#### 4.3 Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide

Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and receive the Product at the Delivery Point. During the Delivery Term, each Party or each Party's SC shall conduct all scheduling in accordance with the operating procedures developed by the Parties pursuant to this Agreement and in full compliance with (i) the applicable CAISO Tariff, protocols and scheduling practices for the Product, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. Seller shall be responsible for the proper entry of any information on an E-Tag or in WREGIS. It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Facility through this Agreement and CAISO settlement process and that the more detailed scheduling and operating procedures developed pursuant to this Agreement complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.

(b) CAISO Costs and Revenues. Subject to the last sentence of this Section 4.3(b), Seller shall be responsible for all CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Facility and 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) or other CAISO charges associated with the Facility (as provided by the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, subject to the last sentence of this Section 4.3(b) 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 the sanctions or penalties shall be Seller's responsibility. Notwithstanding anything to the contrary in this Section 4.3(b), if Buyer's actions cause CAISO costs, sanctions, and/or penalties to Seller, then such costs, sanctions and/or penalties shall be Buyer's responsibility.

4.4 Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Available Capacity. No less than ninety (90) 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 a non-binding forecast of each month's average-day expected Scheduled Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available 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 designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer. If no forecast is provided pursuant to the first sentence of this Section 4.4(b), the forecast provided for the respective month in Section 4.4(a) shall satisfy the requirements of this Section 4.4(b).

4.5 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1, Section 4.6, or Exhibit F. Seller shall be permitted to reduce deliveries of Product during any Planned Outage or other period of scheduled maintenance on the Facility; *provided* that Seller shall make a reasonable effort to avoid Planned Outages during the months of July, August and September.

(a) **Forced Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Outage.

(b) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon notice of a Curtailment Order pursuant to the terms of the Interconnection Agreement or applicable tariff.

(c) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(d) **Seller Curtailments.** Seller shall have the right to implement Seller Curtailments.

4.6 **Expected Energy and Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 (“Expected Energy”). Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for such period. 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 F.

4.7 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, 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 Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:

(a) Prior to 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 “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee

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 Buyer’s WREGIS Account.

(b) Seller shall cause Forward 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 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.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility’s metered data.

(d) 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 Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) Without limiting Seller’s obligations under this Section 4.7, if there is a mismatch between the WREGIS Certificates and Metered Energy 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.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7) after the Effective Date, the Parties promptly shall modify this Section 4.7 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 Metered Energy in the same calendar month.

(g) Subject to clause (f) above, Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.

## **ARTICLE 5 TAXES**

5.1 **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 Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). 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. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **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 therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with applicable Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **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, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Energy produced at the Facility using a commercially available, CAISO-approved metering system. Such meter shall be installed and maintained at Seller's cost. The 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 that 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 the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web (or replacement system) and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The cost of testing shall be for Buyer's account unless after testing, the meter is found to be inaccurate by more than one percent (1%), in which case the cost shall be for Seller's account. 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: (a) the metering data can be corrected by reference to the back-up metering equipment required by Section 7.3, then correction will be used to adjust prior invoices affected by the metering inaccuracy; (b) the metering data cannot be corrected by reference to the back-up metering equipment required by Section 7.3 (including when the meter inaccuracy commenced), 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.

7.3 **Back-Up Meters.** Seller shall own and maintain back-up metering equipment located at the Facility. Upon Buyer's reasonable request, Seller shall inspect and test the back-up meter(s). The cost of testing shall be for Buyer's account unless after testing, the meter is found to be inaccurate by more than one percent (1%), in which case the cost shall be for Seller's account. A qualified representative of Buyer may attend any metering equipment tests undertaken by Seller at Buyer's request.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than five (5) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the CAISO Approved Meter, the Contract Price applicable to such Product, deviations between the Scheduled Energy and the Metered Energy, and the LMP prices at the Facility PNode and Delivery Point for each Settlement Period; and (b) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Upon reasonable request by Buyer, Seller shall provide Buyer with access to CAISO T+12, T+3, and T+55 statements or comparable data for a specific trade day to assist with the resolution of any disputes between Buyer and CAISO.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within fifteen (15) days after receipt of the invoice. 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.

8.3 **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 two (2) years or as otherwise required by applicable Law. Upon fifteen (15) days written Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or there is determined to have been a meter inaccuracy greater than plus or minus one percent ( +/- 1 % ). If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment on Buyer’s next monthly invoice. 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 non-erring Party received Notice thereof.

8.5 **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 two (2) 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 upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement 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, including any related damages calculated pursuant to Exhibits B and F, 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.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, within thirty (30) days of the Effective Date, Seller shall deliver Development Security of [*Redacted.*]. The Development Security shall be delivered in one, or more, of the forms set forth in the definition of "Development Security." Seller shall maintain the Development Security in full force and effect until Commercial Operation has been achieved or Buyer draws on the Development Security after Buyer has failed to pay any Commercial Operation Delay Damages that are due and owing. Following the earlier of (i) the Commercial Operation Date and (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less any amounts drawn in accordance with Exhibit B. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (x) fails to maintain the Credit Rating required by the definition of "Letter of Credit", (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have three (3) Business Days to deliver substitute Development Security in one of the forms set forth in the definition of Development Security. So long as no Event of Default caused by Seller exists and is continuing, Seller may, at any time, but not more than twice per year, arrange for the delivery of one or more substitute forms of Development Security in exchange for all, or any portion, of the existing Development Security, provided that Seller gives Buyer at least ten (10) days' prior notice of the substitution of the Development Security. In the event Seller provides a substitute Development Security, Buyer will return the previous form of Development Security within ten (10) days of the receipt of the substitute Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement and as a condition to Commercial Operation, Seller shall deliver Performance Security, in one, or more, of the forms set forth in the definition of "Performance Security", to Buyer in the amount of [*Redacted.*] of Guaranteed Capacity. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller arising 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 Credit Rating required by 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 date through which Seller is required to maintain the Performance Security, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have three (3) Business Days to deliver substitute Performance Security in one of the forms set forth in the definition of Performance Security. So long as no Event of Default caused by Seller exists and is continuing, Seller may, at any time, but not more than twice per year, arrange for the delivery of one or

more substitute forms of Performance Security in exchange for all, or any portion, of the existing Performance Security, provided that Seller gives Buyer at least ten (10) days' prior notice of the substitution of the Performance Security. In the event Seller provides a substitute Performance Security, Buyer will return the previous form of Performance Security within ten (10) days of the receipt of the substitute Performance Security. At all times, the aggregate Performance Security in one or more forms shall be no less than the amount set forth in this Section 8.8, provided, however, that Seller shall not have an obligation to replenish the amount of the Performance Security following a drawdown of such security by Buyer.

8.9 **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 any cash collateral or cash equivalent provided through a Letter of Credit received from Seller as the Development Security or Performance Security 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):

(a) 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;

(b) 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

(c) 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.

8.10 **Buyer Financial Requirements and Adequate Assurance.** At any time, if Buyer does not have or maintain a Credit Rating of at least Aa3 by Moody's and at least AA- by S&P, then if at any time Buyer's maximum Total Liabilities to Tangible Unrestricted Net Position exceeds 3:1.00, measured using its fiscal year end financial statements, Seller may

demand Adequate Assurances in an amount of up to [*Redacted.*], which Adequate Assurances shall be provided by Buyer within ten (10) Business Days of such demand. In the event that Adequate Assurances are provided in the form of cash collateral, Buyer shall be deemed to have granted Seller a continuing first priority security interest in, lien on, and right of set-off against such collateral. For purposes of this Section 8.10, “**Total Liabilities to Tangible Unrestricted Net Position**” is defined as the total of current liabilities, non-current liabilities and contingent liabilities, then divided by Tangible Unrestricted Net Position; “**Tangible Unrestricted Net Position**” is defined as total Unrestricted Net Position less any intangible assets; and “**Unrestricted Net Position**” is defined as total assets less temporarily and permanently restricted assets, less total liabilities.

## **ARTICLE 9 NOTICES**

9.1 **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 on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **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: (a) 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; (b) 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; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) 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.

## **ARTICLE 10 FORCE MAJEURE**

### 10.1 **Definition.**

(a) “**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 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.

(b) 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, high winds in excess of 10 m/s, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party; site conditions (including subsurface conditions, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); or any temporary restraint or restriction imposed by applicable Law or any directive from a Governmental Authority.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction operation, or maintenance of the Facility or 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; (iii) a Curtailment Order; (iv) a lack of insolation; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent Seller’s inability to obtain sufficient labor, equipment, materials, or other resources 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; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** 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. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) 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; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for three hundred and sixty-five (365) consecutive days, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; *provided, however*, that if Seller is the affected Party as a result of damage to the Facility, Seller may elect, to repair the Facility by providing Notice to Buyer no later than ninety (90) days after the occurrence of the Force Majeure Event of such intent, accompanied by a report from independent, third-party engineer determining in writing that the Facility can be repaired or replaced within twenty-four (24) months after the first day of such Force Majeure Event. Upon completion of the repairs, Seller shall recalculate the Guaranteed Capacity by repeating the Initial Facility Performance Test. Any reduction in the Guaranteed Capacity shall proportionately reduce the Expected Energy and Guaranteed Energy Production. Upon any termination pursuant to this Section 10.4, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(b).

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) 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;

(iii) 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, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof, *provided*, that if such failure cannot be cured within such period, despite reasonable commercial efforts, the initial period shall be extended for an additional ninety (90) days;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2; or

(vi) 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.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

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

(ii) the failure by Seller to achieve an Installed Capacity for the Facility of at least ninety percent (90%) of the Guaranteed Capacity within ninety (90) days after the Guaranteed Commercial Operation Date, as adjusted by the Development Cure Period;

(iii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 of this Agreement and such failure is not remedied within two (2) Business Days after Notice thereof;

(iv) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement 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;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(v) 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 five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain the Credit Rating required by the definition of "Letter of Credit";

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) 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;

(D) 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;

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

(F) 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; or

(c) with respect to Buyer as the Defaulting Party, Buyer fails to deliver Adequate Assurances to the extent required by Section 8.10.

11.2 **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 right 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, to accelerate all amounts owing between the Parties, and collect as liquidated damages, as applicable, the Damage Payment (in the case of an Event of Default occurring before the Commercial Operation Date) or the Termination Payment calculated in accordance with Section 11.3 below (in the case of an Event of Default occurring after the Commercial Operation Date); (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) 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. Payment by the Defaulting Party of the Damage Payment (in the case of an Event of Default occurring before the Commercial Operation Date) or Termination Payment (in the case of an Event of



Default occurring on or after the Commercial Operation Date) as provided by clause (a) above, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 11.1(a)(iv), if the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. 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 (a) 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, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section 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.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to 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 shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, 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, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, 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.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

## **ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **Damages Limitation Prior to the Commercial Operation Date.** Notwithstanding any other provision in this agreement, for an Event of Default occurring prior to the Commercial Operation Date, in no event shall Seller be liable to Buyer for any damages, claims, demands, suits, causes of action, Losses, costs, expenses and/or liabilities, that are in the aggregate in excess of an amount equal to the Damage Payment.

12.2 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, 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, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.3 **Waiver and Exclusion of Other Damages.** 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 THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE 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 TAX BENEFITS 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 ANY 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 ARTICLE 11, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, 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 CONTEXT 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.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, 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.

(b) 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, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary 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.

(c) 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 applicable 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.

(d) 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.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other applicable laws.

(b) 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.

(c) 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 applicable Law presently in effect having applicability to Buyer, including community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, 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.

(d) 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.

(e) 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, (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.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) 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 each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) 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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any applicable Law.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in whole or in part in connection with any financing or other financial arrangements; (b) an Affiliate of Seller, including Maverick Solar, LLC if Seller has designated the Maverick Solar facility pursuant to Section 2.2; and (c) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); *provided however*, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment; *provided further* that with respect to a voluntary assignment pursuant to clause (c) of this section, the assignee shall be a Qualified Assignee and shall provide to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer concludes in a commercially reasonable manner that it does not agree that Seller's assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide additional payment security in an amount and form reasonably acceptable to Buyer. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer. Subject to Section 15.1, nothing herein shall prevent Seller from assigning this Agreement to a Lender as collateral. Any Change of Control of Seller (whether voluntary or by operation of

Law) shall be deemed an assignment under this Section 14.2; *provided* that Seller may, without the prior written consent of Buyer: (1) enter into a sale-leaseback transaction, tax equity financing or any other financing or a sale to any Lender, (2) any transaction or series of transactions in which the membership interests in Seller are issued or transferred to an Affiliate of Seller for the purposes of an internal reorganization and (3) enter into any sell-down or syndication of the non-tax equity interest in a tax equity financing provided that an Affiliate of Seller continues to have the power to control the management of Seller.

14.3 **Change of Control of Buyer.** Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide adequate financial assurances to Seller in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, 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 by Seller and the requirements of this Section 14.3 have been satisfied.

## **ARTICLE 15 LENDER ACCOMMODATIONS**

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default

by the granting Party in accordance with Sections 11.1 and 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

## **ARTICLE 16 DISPUTE RESOLUTION**

16.1 **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. 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, 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.

16.3 **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.

## **ARTICLE 17 INDEMNIFICATION**

### **17.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 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 from its sole 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.

17.2 **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 the indemnity provided for in this Article 17 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 such Party and satisfactory to the Indemnified Party, *provided, however*, that 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.

(a) 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* that 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 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, 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.



## **ARTICLE 18 INSURANCE**

### **18.1 Insurance.**

(a) 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 \$1,000,000 per occurrence, and an annual aggregate of not less than two million dollars \$2,000,000, endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of \$5,000,000. 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.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the \$1,000,000 policy limit will apply to each employee.

(c) 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.

(d) 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 \$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.

(e) 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.

(f) 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 \$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 \$1,000,000 per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) 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; provided, however, that Seller need not deliver certificates of insurance evidencing construction all-risk form property insurance until five (5) Business Days prior to the commencement of equipment deliveries to the Site. These certificates shall specify that Buyer shall be given at least thirty (30) days prior written 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 19**

### **CONFIDENTIAL INFORMATION**

19.1 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) proposals and negotiations until this Agreement is approved and executed by the Buyer, 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.

19.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential

Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

## **ARTICLE 20 MISCELLANEOUS**

20.1 **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.

20.2 **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.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **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 service provider and energy service recipient, 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).

20.5 **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.

20.6 **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, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

20.7 **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.

20.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

20.10 **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 (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. 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 in connection with this Agreement.

20.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that the Parties are forward contract merchants, within the meaning of the United States Bankruptcy Code.

**EXHIBIT A**

**DESCRIPTION OF SOLAR FACILITY**

**Site Name:** Desert Harvest

**APN:** 810110021  
810110022  
810110023  
810110026  
810110027  
810110028  
810110029  
810182001  
810182002  
810190003  
810190004  
810170001

**County:** Riverside County, California

**MW AC:** 80

**Additional Information:**

**Site Name:** Maverick

**APN:** 807172019  
807172020  
807172022  
807172023  
807172025

**County:** Riverside County, California

**MW AC:** 80

**Additional Information:**

**APN numbers for Facility will be updated upon identification of Facility pursuant to Section 2.2.**

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

a. Seller shall cause construction to begin on the Facility by January 3, 2020, (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, including the physical movement of soil at the Facility, grading, grubbing, site access preparation or vegetation removal, at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility (“**Construction Start**”). On the date of the beginning of construction (the “**Construction Start Date**”), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.

b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay; *provided* that if Seller, notwithstanding having failed to timely achieve Construction Start, is able to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, Buyer shall refund any amounts previously paid as Daily Delay Damages to Seller. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within five (5) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller if Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date. Seller’s liability for failing to achieve Construction Start by the Guaranteed Construction Start Date shall not exceed the remaining amount of the Development Security.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” is the date on which the following conditions have been met: (i) all necessary permits have been obtained and all conditions to operate the Facility have been satisfied and complied with in order to produce, sell and transmit Energy; (ii) Seller has received final permission to parallel from the PTO; (iii) Seller has successfully completed an Initial Facility Performance Test, which has demonstrated, on the date of the performance test, peak facility electrical output of no less than ninety percent (90%) of the Guaranteed Capacity; (iv) Seller has fulfilled all of the conditions precedent in Section 2.3 of the Agreement, (v) Seller has confirmed to Buyer in writing that Commercial Operation has been satisfied, and (vi) Seller has delivered to Buyer the Performance Security in accordance with Section 8.8. The “**Commercial Operation Date**” shall be the date on which Seller has achieved Commercial Operation, provided, however, that the Commercial Operation Date shall not occur earlier than the date that is six (6) months prior to the Guaranteed Commercial Operation Date (such date, the “**Earliest Acceptable COD**”).

a. Seller shall cause Commercial Operation to occur by December 1, 2020 (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the date it anticipates achieving Commercial Operation and shall confirm to Buyer in writing when Commercial Operation has been achieved.

b. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy to Buyer. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

3. **Extension of the Guaranteed Dates.** The Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:

a. despite the exercise of diligent and commercially reasonable efforts by Seller, all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority, required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and Facility to make available and sell Product are not received by August 1, 2020;

b. a Force Majeure Event occurs;

c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities and any Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by June 1, 2020; or

d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date;

*provided, however,* that any cumulative extensions granted pursuant to this section shall not exceed one-hundred twenty (120) days (“**Development Cure Period**”).

4. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operations Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to or greater than the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to \$100,000 for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Upon payment of the Capacity Damages, the Guaranteed Capacity shall be adjusted downward to the Installed Capacity at the time of the payment and the Expected Energy for the Delivery Term shall be proportionately reduced to reflect the reduction in Guaranteed Capacity (and a revised Schedule F-1 shall be attached to this Agreement to reflect such reduction).

Seller's payment of Capacity Damages shall be Buyer's sole and exclusive remedy, subject to Section 11.1(b).

5. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof. Buyer's right to receive Commercial Operation Delay Damages is Buyer's sole and exclusive remedy for any delay by Seller in achieving Commercial Operation. Seller's aggregate liability for any delay in achieving Commercial Operation shall be limited to the amount of the Development Security and once such limitation of liability has been reached, Seller shall have no further liability for Commercial Operation Delay Damages.



**EXHIBIT C**  
**CONTRACT PRICE**

The Contract Price of the Product shall be: [*Redacted.*]

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**EXHIBIT D**

**EMERGENCY CONTACT INFORMATION**

**BUYER:**

Greg Brehm, Director of Power Resources  
Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Fax No.: (415) 459-8095  
Phone No.: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

**SELLER:**

Desert Harvest, LLC  
c/o EDF Renewable Development, Inc.  
15445 Innovation Drive  
San Diego, CA 92128  
Attention: Blaine Sundwall  
Telephone: (858) 521-3300  
Fax: (858) 521-3333  
Email: [Blaine.Sundwall@edf-re.com](mailto:Blaine.Sundwall@edf-re.com)

**EXHIBIT E**

**MILESTONE SCHEDULE**

<b>Identify Milestone</b>	<b>Date for Completion</b>
Evidence of Site Control	Complete
Documentation of Conditional Use Permit if required: CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [x] EIR	January 1, 2020
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	January 1, 2018
Outside Date for Capacity Expansion Notice	December 31, 2017
Construction Start	January 5, 2020
Initial Synchronization	August 1, 2020
Commercial Operation Date	December 1, 2020

## EXHIBIT F

### 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 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) [*Redacted.*]

D = the Contract Price for the Performance Measurement Period, in \$/MWh

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

**“Lost Output”** means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of a Force Majeure Event, Buyer Default, Forced Outage, Seller Curtailment resulting from Negative LMP pricing, or Curtailment Order. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

**SCHEDULE F-1**  
**EXPECTED ENERGY**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Schedule F-1

**EXHIBIT G**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

Marin Clean Energy

1125 Tamalpais Avenue

San Rafael, CA 94901

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy (“Beneficiary”), 1125 Tamalpais Avenue, San Rafael, CA 94901, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry of \_\_\_\_\_, 201\_, subject to automatic extensions provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation in person or by courier to the Issuer at [insert bank address] or by fax at facsimile no. (xxx)xxx-xxxx. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry 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.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to

Exhibit G

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the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

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(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 Marin Clean Energy , 1125 Tamalpais Avenue, San Rafael, CA 94901, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (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 Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2016 (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

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 Marin Clean Energy 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 Marin Clean Energy by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_



**EXHIBIT H**  
**MILESTONE PROGRESS REPORTING FORM**

Exhibit H

- 1 -



**Reporting Date**

**EXECUTIVE SUMMARY**

- *This section of the report provides a summary of development tasks, i.e. land control, permitting, environmental and key construction and procurement milestones.*

**CONSTRUCTION COUNTERPARTY UPDATES**

***Balance of Plant Contractor Construction Updates:***

**Overview:** This section provides overall construction overall status.

**Safety Statistics:** This section provides statistics for:

- Number of Minor Injuries:
- Number of Near Misses:
- Number of Recordable:
- Total Manhours for the month:
- Total project to date manhours:

**Current site status:**

- Vaults - % Installed.
- Posts - % Installed.
- Bearings - % Complete.
- Torque Tubes - % Complete.
- Actuator Assembly - % Complete.
- Module Installation - % Complete.

**Upcoming work includes:**

- Provide a summary of the following month’s activities.

**Key Construction Milestones:**

Milestones	Guaranteed Dates	Forecasted/Actual Dates
Start of Construction		
Substation Energization		
Circuit #1 Completion		
Circuit #2 Completion		
Project Substantial Completion		

## **PROCUREMENT COUNTERPARTY UPDATES**

### **Solar Procurement Updates**

**Overview:** This section provides overall procurement status for solar panels.

**Current procurement status:**

Milestones	Guaranteed Dates	<i>Forecasted/Actual Dates</i>
Supply Agreement Execution		
Start of Manufacturing		
Factory Testing		
Start Delivery to Site		
Completion of Delivery to Site		

### **Inverter Procurement Updates**

**Overview:** This section provides overall procurement status for inverters.

**Current procurement status:**

Milestones	Guaranteed Dates	<i>Forecasted/Actual Dates</i>
Supply Agreement Execution		
Start of Manufacturing		
Factory Testing		
Start Delivery to Site		
Completion of Delivery to Site		

### **Racking Procurement Updates**

**Overview:** This section provides overall procurement status for racking.

**Current procurement status:**

Milestones	Guaranteed Dates	<i>Forecasted/Actual Dates</i>
Supply Agreement Execution		
Start of Manufacturing		
Factory Testing		
Start Delivery to Site		
Completion of Delivery to Site		

## **INTERCONNECTION**

**Overview:** This section provides overall interconnection status.

**Current site status:** This section provides construction status of the network upgrades if any.

Milestones	Guaranteed Dates	<i>Forecasted/Actual Dates</i>
GIA Execution		
Start of Construction		
End to End Testing		
Energization		
Commercial Operation		

**Upcoming work includes:**

-Provide a summary of the following month's activities.

## **CAISO UPDATES**

**Overview:** This section provide overall CAISO status.

## **POTENTIAL MILESTONE DELAYS**

**Overview:** This section identifies any unexpected issues that would cause any of the Milestones identified in the Power Purchase and Sale Agreement to be delayed. To the extent any such issues are identified, a remedial action plan shall be set forth below (or attached) detailing how such delay shall be recovered or mitigated.

## **MISCELLANEOUS**

**Overview:** This section provide other important updates not covered by the other section above.

## **EXHIBITS**

This section covers backup reports highlighted above.

**EXHIBIT I**  
**FORM OF GUARANTY**  
**GUARANTY AGREEMENT**

1. Guaranty. For valuable consideration, \_\_\_\_\_ [Guarantor's legal name] \_\_\_\_\_, \_\_\_\_\_ [legal status] (“Guarantor”) guarantees payment to the Marin Clean Energy, a California joint powers authority (“Beneficiary”), its successors and assigns, of all amounts owed to Beneficiary by \_\_\_\_\_ [Seller's legal name] \_\_\_\_\_, \_\_\_\_\_ [legal status] (“Principal”) under that certain Master Power Purchase and Sale Agreement between Beneficiary and Principal dated \_\_\_\_\_ [date] \_\_\_\_\_, as amended from time to time (“Agreement”) (said amounts are hereinafter referred to as the “Obligations”).

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

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

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

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

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

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

2. Guaranty Absolute. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
  - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
  - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
  - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
  - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
  - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
  - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
  - (vii) Beneficiary's exercise of any other rights available to it under the Agreement;

Exhibit I

- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
  - (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations; and
  - (x) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.
- (f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

3. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the Principal has fully satisfied all its obligations under all Transactions under the Agreement, provided however, the termination of this Guaranty shall not release Guarantor from liability for any Obligations arising prior to such termination.
- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

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

4. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty may not be reduced, limited,

Exhibit I

impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

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

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

6. Waivers of Guarantor.

- (a) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (b) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (c) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;
- (d) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (e) Guarantor waives any other circumstances that limit the liability of or exonerate guarantors generally or provide any legal or equitable discharge of Guarantor's obligations hereunder;
- (f) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and



- (g) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
7. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
8. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors and assigns. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.
- The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.
9. Representations of Guarantor. Guarantor represents and warrants that:
- (a) It is a corporation duly organized, validly existing and in good standing in the jurisdiction of its formation and has full power and authority to execute, deliver and perform this Guaranty;
  - (b) It has taken all necessary corporate actions to execute, deliver and perform this Guaranty;
  - (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
  - (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and
  - (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.
10. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other reasonable costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty.

Exhibit I

11. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.
12. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.
13. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

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

14. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.
15. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:                                 *[Name]*  
  *[Street]*  
  *[City, State Zip]*  
  Attn:  
  Phone:  
  Facsimile:

with a copy to:                                *[Name]*  
  *[Street]*  
  *[City, State Zip]*  
  Attn:  
  Phone:  
  Facsimile:

Guarantor:                    *[Guarantor]*  
                                      *[Street]*  
                                      *[City, State Zip]*  
                                      Attn:  
                                      Phone:  
                                      Facsimile:

Principal:                    *[Principal]*  
                                      *[Street]*  
                                      *[City, State Zip]*  
                                      Attn:  
                                      Phone:  
                                      Facsimile:

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

[signature page follows]

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

\_\_\_\_\_ *[legal name]* \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT J**

**FORM OF CONSTRUCTION START CERTIFICATE**

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to MARIN CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**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. the EPC Contract related to the Facility was executed on \_\_\_\_\_;
2. the Limited Notice to Proceed with the construction of the Facility was issued on \_\_\_\_\_ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site(s): \_\_\_\_\_ (such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT K**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Marin Clean Energy (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**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.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%).
- (2) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Transmission System, [Name of Transmission System] on \_\_\_[DATE]\_\_\_.
- (4) The Transmission System has provided documentation supporting full unrestricted release for Commercial Operation by [Transmission System as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
- (5) 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: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT L**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] 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.

The initial Facility performance test under Seller’s EPC contract for the Facility demonstrated peak Facility 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: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT M**

**FORM OF CAPACITY EXPANSION NOTICE**

This Capacity Expansion Notice (this “**Notice**”) is delivered by MARIN CLEAN ENERGY (“**Buyer**”) to [SELLER ENTITY] (“**Seller**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**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. The terms of Sections 2(a), (c), (d), (e) and (g) of the First Amendment to Power Purchase Agreement attached hereto as Annex A are incorporated herein by reference.

Pursuant to Section 2.6 of the Agreement, Buyer hereby requests and agrees that the Agreement be amended in accordance with the terms set forth in the First Amendment to Power Purchase and Sale Agreement attached hereto as Annex A.

[BUYER]

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Seller hereby acknowledges and agrees that the Agreement is, as of the date of Buyer’s execution above (the “**Amendment Effective Date**”), amended in accordance with the terms of the First Amendment to Power Purchase and Sale Agreement attached hereto as Annex A.

[SELLER]

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ANNEX A TO CAPACITY EXPANSION NOTICE

**FIRST AMENDMENT TO POWER PURCHASE AND SALE AGREEMENT**

This FIRST AMENDMENT TO POWER PURCHASE AND SALE AGREEMENT (this "**Amendment**") is entered into between [SELLER ENTITY] ("**Seller**") and MARIN CLEAN ENERGY ("**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 (as defined below).

WHEREAS, Seller and Buyer are Parties to that certain Power Purchase and Sale Agreement (the "**Agreement**"), dated as of [\_\_\_\_\_] (as amended from time to time, the "Agreement"); and

WHEREAS, pursuant to Section 2.6 of the Agreement, the Parties wish to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements hereinafter set forth, and set forth in the Agreement and the Capacity Expansion Notice, and for other good and valuable consideration, as set forth herein, the Parties agree, as of the Amendment Effective Date, to amend the Agreement as follows:

**"Expansion Capacity"** means the amount of Guaranteed Capacity specified in the First Amendment to Power Purchase and Sale Agreement entered that exceeds 80 MW AC.

**"Expansion Multiplier"** means the amount equal to  $(80 + X) / 80$ , where X is the Expansion Capacity.

1. AMENDMENTS. This Agreement is hereby amended by:

- a. Deleting each definition of Guaranteed Capacity in its entirety and replacing it with the following:

**"Guaranteed Capacity"** means [\_\_\_] MW AC capacity, as measured as the sum of the Inverter Capacity of all the inverter units of the Facility.

- b. Deleting the reference to "80 MW AC" on the Cover Sheet and replacing it with the revised Guaranteed Capacity amount set forth above.
- c. Deleting the chart of Delivery Term Expected Energy from the Cover Sheet and replacing such chart with the following chart:



<b>Contract Year</b>	<b>Expected Energy (MWh)</b> In each row below, the revised Expected Energy shall be the product of <i>(Expected Energy for applicable Contract Year based on 80 MW in MWh) times the Expansion Multiplier</i>
1	
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- d. Deleting the Damage Payment Amount on the Cover Sheet of **[Redacted.]** and replacing it with the amount equal to the Expansion Multiplier times **[Redacted.]**.
- e. Deleting each reference in the Agreement to the Development Security amount of **[Redacted.]** and replacing each such reference with the amount equal to the Expansion Multiplier times **[Redacted.]**; provided, that Seller will be deemed to have satisfied its obligations under Section 8.7 of the Agreement so long as Seller increases the face value original Development Security by such amount no later

than 30 days following the Amendment Effective Date.

- f. Deleting the chart of Expected Energy in Schedule F-1 to Exhibit F of the Agreement and replacing such chart with the following chart:

<b>Contract Year</b>	<b>Expected Energy (MWh)</b> In each row below, the revised Expected Energy shall be the product of <i>(Expected Energy for applicable Contract Year based on 80 MW in MWh)</i> times the <i>Expansion Multiplier</i>
1	
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2. MISCELLANEOUS.

- a. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- b. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- c. The Capacity Expansion Notice, this Amendment 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 the Capacity Expansion Notice or this Amendment.
- d. In the event of any dispute arising under the Capacity Expansion Notice or this Amendment, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. 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, either Party may seek any and all remedies available to it at Law or in equity, subject to any limitations set forth in the Capacity Expansion Notice or this Amendment.
- e. The Capacity Expansion Notice and this Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- f. This Amendment shall be deemed effective as of the Amendment Effective Date.
- g. The Capacity Expansion Notice and this Amendment shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.



November 3, 2016

TO: Marin Clean Energy Technical Committee

FROM: Greg Brehm, Director of Power Resources

RE: Resolution 2016-08 Approving Power Purchase and Sale Agreement between MCE and Antelope Expansion Phase 2, LLC (Agenda #06)

ATTACHMENTS: A. Resolution 2016-08 Approving Power Purchase and Sale Agreement with Antelope Expansion Phase 2, LLC  
B. Draft Power Purchase and Sale Agreement between MCE and Antelope Expansion Phase 2, LLC

Dear Technical Committee Members:

---

**SUMMARY:**

As a result of this year's Open Season Procurement Process for renewable energy, staff received an offer from Sustainable Power Group ("sPower") for a power purchase agreement ("PPA" or "Agreement") for output from a new solar photovoltaic project located in the Antelope Valley of the western Mojave Desert in Southern California. The facility will be developed by Antelope Expansion Phase 2, LLC, a wholly-owned subsidiary of Salt Lake City-based sPower.

The Antelope Expansion Phase 2 project will aggregate 105 MW (AC) of output from multiple parcels in the Antelope Valley that are interspersed with another 400 MW of sPower's solar generating facilities that are either already operational or currently under development. The Antelope Expansion Phase 2 facilities are expected to commence commercial operation in 2018. Staff reviewed this offer with the Ad Hoc Contracts Committee on August 29, 2016. The Ad Hoc Contracts Committee recommended moving forward with contract negotiations, and staff negotiated the attached draft PPA with sPower for the purchase of energy, capacity and renewable attributes. This project is particularly interesting due to its attractive price and sPower's strong track record in developing similar projects in the same region.

Renewable energy volumes produced by the facility will complement MCE's existing power supply with output from a California-located generating project. The timing of deliveries will fill annual net short positions identified in MCE's Integrated Resource Plan, specifically contributing to replacement of volumes previously delivered under the Shell Energy North America (SENA) Agreement and the RE Kansas PPA, both of which expire in December 2017. Additional information is provided below regarding the prospective counterparty.

Staff would like to direct special consideration to the potential impact of negative California Independent System Operator (CAISO) pricing for solar generation delivered to the grid in areas saturated with solar development. Staff considered the impacts of negative CAISO revenue and, in order to reduce MCE's exposure to adverse market conditions, incorporated provisions that (i) allow for MCE to direct curtailment of generation during such events and (ii) because Day Ahead market prices are much less frequently negative than Real Time market prices, require for Day Ahead scheduling of generation.

### **Background on sPower**

- A portfolio company of Fir Tree Partners that owns, operates, and develops utility-scale solar and wind facilities in the United States and United Kingdom
- Over 150 operational projects that amount to 650 MW of generation capacity
- Headquartered in Salt Lake City with regional offices in San Francisco, Long Beach, and New York City
- Total portfolio of 6.7 GW of projects, including those that are operating, under construction, or otherwise in the development pipeline

### **Contract Overview – Antelope Expansion Phase 2**

- Project: will consist of 105 MW new solar PV with 32% capacity factor – capable of supplying the annual electric needs of approximately 49,000 MCE residential customers.
- Location: Lancaster, California (Los Angeles County), in SCE service territory.
- Project will utilize technologically proven ground mount solar PV technology
- Guaranteed commercial operation date: September 1, 2018
- Contract term: 20 years
- Delivery profile: Peaking
- Expected annual energy production: approximately 300,000 MWhs, including all capacity and environmental attributes associated therewith
- Guaranteed energy production: 80% of projected annual deliveries
- Energy price: fixed energy price applicable to each year of contract
- No credit/collateral obligations for MCE
- MCE to receive financial compensation in the event of Seller's failure to successfully achieve certain development milestones
- MCE to receive financial protection from costs associated with changes in law and compliance therewith

### **Summary:**

The Antelope Expansion Phase 2 project is a good fit for MCE's resource portfolio based on the following considerations:

- The project size supports MCE's expansion and future renewable energy requirements
- Timing of initial energy deliveries under the Agreement is aligned with planned reduction in renewable energy deliveries under the RE Kansas and SENA Agreements
- The project is being developed by an experienced team, which is currently supplying power from various projects to SCE and PG&E among other utilities
- The project is located within California and meets the highest value renewable portfolio standards category ("Bucket 1")
- Energy from the project is competitively priced

**Recommendation:** Authorize, via Resolution 2016-08, execution of Power Purchase and Sale Agreement with Antelope Expansion Phase 2, LLC for renewable energy supply.

**RESOLUTION NO. 2016-08**

**A RESOLUTION OF THE TECHNICAL COMMITTEE OF  
MARIN CLEAN ENERGY APPROVING A POWER PURCHASE AGREEMENT  
BETWEEN MARIN CLEAN ENERGY AND ANTELOPE EXPANSION PHASE 2, LLC**

**WHEREAS**, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, the MCE Board of Directors delegated approval authority for power purchase agreements to the MCE Technical Committee at its meeting on May 19, 2016; and;

**WHEREAS**, MCE, via the 2015 Integrated Resource Plan, identified procurement policies and needs to meet future renewable energy requirements and, via the 2016 Open Season process, solicited offers for long-term renewable energy commitments to meet said procurement needs;

**WHEREAS**, Antelope Expansion Phase 2, LLC participated in MCE's 2016 Open Season solicitation and submitted an offer that warranted inclusion in MCE staff's review with its Ad Hoc Contracts Committee;

**WHEREAS**, MCE's Ad Hoc Contracts Committee reviewed the offer submitted by Antelope Expansion Phase 2, LLC and directed MCE staff to further pursue a Power Purchase Agreement with Antelope Expansion Phase 2, LLC;

**WHEREAS**, MCE and Antelope Expansion Phase 2, LLC have jointly negotiated a mutually agreeable Power Purchase Agreement for 80 to 150 MW of long-term renewable energy, capacity, and associated attributes; and

**WHEREAS**, MCE and Antelope Expansion Phase 2, LLC now desire to enter into said Power Purchase Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, by the Technical Committee of MCE that the MCE Technical Committee authorizes execution of the Power Purchase and Sale Agreement between MCE and Antelope Expansion Phase 2.

**PASSED AND ADOPTED** at a regular meeting of the MCE Technical Committee on this 3rd day of November 2016, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

**ATTEST:**

\_\_\_\_\_  
CHAIR, MCE TECHNICAL COMMITTEE

\_\_\_\_\_  
SECRETARY, MCE



**EXECUTION VERSION**

**POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

**Seller:** Antelope Expansion Phase 2, LLC, a Delaware limited liability company

**Buyer:** Marin Clean Energy, a California joint powers authority

**Description of Facility:** A 105 MW AC photovoltaic electric generating facility located in the City of Lancaster, Los Angeles County, California

**Guaranteed Commercial Operation Date:** September 30, 2018

**Milestones:**

Identify Milestone	Date for Completion
<b>Evidence of Site Control</b>	September 30, 2017
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR	February 28, 2018
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase I: Complete Phase II: September 15, 2017
<b>Executed Interconnection Agreement</b>	September 17, 2018
<b>Financial Close</b>	April 30, 2018
<b>Construction Start</b>	April 30, 2018
<b>Initial Synchronization</b>	July 31, 2018
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</b>	July 31, 2018
<b>Commercial Operation Date</b>	September 1, 2018

**Delivery Term:** Twenty (20) Contract Years

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	307,539
2	306,001
3	304,471
4	302,949
5	301,434
6	299,927
7	298,427
8	296,935
9	295,451
10	293,973
11	292,503
12	291,041
13	289,586
14	288,138
15	286,697
16	285,264
17	283,837

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
18	282,418
19	281,006
20	279,601

**Contract Price:**

<b>Contract Year</b>	<b>Contract Price (\$/MWh)</b>
1 – 20	\$ [REDACTED]

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes

**Deliverability:**

- Energy Only Status
- Full Capacity Deliverability Status

a) If Full Capacity Deliverability Status is selected, provide the Expected FCDS Date: September 30, 2018

**Scheduling Coordinator:** Buyer/Buyer Third-Party

**Development Security:** \$ [REDACTED]

**Performance Security:** \$ [REDACTED]

**Damage Payment:** [As described under Damage Payment definition in Article 1  
\$ \_\_\_\_\_]

**Notice Addresses:**

**Seller:**

Antelope Expansion Phase 2, LLC c/o sPower  
Address: 2180 S 1300 E, Suite 600 Salt Lake City, UT 84106-2749  
Attention: General Counsel  
Phone No.: (801) 679-3500  
Fax No.: (801) 679-3501  
Email: [operations@spower.com](mailto:operations@spower.com)

With a copy to:

Antelope Expansion Phase 2, LLC c/o sPower  
Address: 201 Mission Street, Suite 540 San Francisco, CA 94105  
Phone No.: (415) 692-7740  
Fax No.: (415) 362-4001  
Email: [legal@spower.com](mailto:legal@spower.com)

**Scheduling:**

Email: [realtime@spower.com](mailto:realtime@spower.com), [outages@spower.com](mailto:outages@spower.com)  
Phone No.: (855) 679-3553  
Fax No.: N/A

**Buyer:**

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Attention: Greg Brehm, Director of Power Resources  
Fax No.: (415) 459-8095  
Phone No.: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

With a copy to (which shall not be required for Notice purposes):

Troutman Sanders LLP  
100 SW Main St., Suite 1000  
Portland, Oregon 97204  
Attention: Stephen Hall  
Phone No.: (503) 290-2336  
Email: [stephen.hall@troutmansanders.com](mailto:stephen.hall@troutmansanders.com)

*[Signatures on following page.]*

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

**SELLER**

Antelope Expansion Phase 2, LLC, a Delaware limited liability company

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

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

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

**BUYER**

Marin Clean Energy, a California joint powers authority

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

MCE Chairperson

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

MCE Executive Officer

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## POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_ (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

### RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the photovoltaic electric generating facility to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of 105 MW AC (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and all Capacity Attributes;

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:

### ARTICLE 1 DEFINITIONS

1.1 **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 3.13.

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

“**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, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the power or authority, through ownership of voting securities, by contract or otherwise to direct the management of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

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

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

“**Available Capacity**” means the capacity from the Facility, expressed in MWs, that is available to generate Product.

“**Bankrupt**” 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.

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

“**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. local time for the Party sending a Notice, or payment, or performing a specified action.

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

“**Buyer Bid Curtailment**” means the occurrence of all of the following:

(a) the CAISO provides notice, including through the Automated Dispatch System, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

(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 produced from the Facility; and

(c) if the Project is subject to a Planned Outage, Forced Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the Buyer Bid Curtailment shall not include any energy that was not generated due to such Planned Outage, Forced Outage, Force Majeure Event or Curtailment Period.

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

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure Event and/or a Curtailment Period during the same time period. The duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up, not to exceed the Ramp Rate designated in Exhibit K.

**“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 Energy produced by the Facility less Electrical Losses and Station Use.

**“CAISO Charges Invoice”** has the meaning set forth in Section 4.3(d).

**“CAISO Grid”** has the same meaning as “CAISO Controlled Grid” as defined in 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), and X-1 2 (2011), 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 and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

**“CEC”** means the California Energy Commission or its successor agency.

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the Facility has commenced commercial operation (as such term is defined by and according to the CEC), 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 Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**CEQA**” means the California Environmental Quality Act, Public Resources Code 21000 *et. seq.*, and the related Guidelines, California Code of Regulations, Title 14, Division 6, chapter 3, Sections 15000-15387.

“**CEQA Date**” means February 28, 2018.

“**Change of Control**” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that 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.

Furthermore, it shall not be a “Change of Control” as a result of transfers of any economic and voting interests to a YieldCo or a subsidiary of a YieldCo that is owned by the YieldCo and Affiliates of sPower and other Persons that have transferred projects to such subsidiary of the YieldCo.

“**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 (a) for the first sixty (60) days of delay: Two Thousand Dollars (\$2000) per day, and (b) thereafter, an amount equal to (i) the Development Security amount required hereunder less One Hundred Twenty Thousand Dollars (\$120,000), divided by (ii) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 19.1.

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

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

“**Contract Price**” has the meaning set forth in Exhibit C.

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

“**Contract Year**” means a period of twelve (12) consecutive calendar 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 Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, agreed to by Seller and Buyer and incorporated into this Agreement.

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

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**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.

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

(a) CAISO orders, directs, alerts, or provides notice to a Party, including through the ADS, to curtail Energy deliveries for: (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 electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for: (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 Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator;

*provided, however*, that Curtailment Order shall not include any Buyer Bid Curtailment or Buyer Curtailment Order.

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

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

**"Damage Payment"** means the dollar amount that equals twelve (12) months minimum expected revenue of the Facility based on Guaranteed Energy Production, which will be calculated prior to the Effective Date.

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.4(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.

**"Deemed Delivered Energy"** 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 and delivered to the Delivery Point during a Buyer Curtailment Period or Buyer's unexcused failure to take delivery of the Product, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation, panel temperature, and wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

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

**"Delivery Point"** means the PNode designated by the CAISO for the Facility.

**"Delivery Term"** shall mean the period of twenty (20) Contract Years 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 (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet.

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

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

**“Effective FCDS Date”** means the date identified in Seller’s Notice to Buyer (along with documentation from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

**“EIRP Forecast”** means the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point.

**“Eligible Intermittent Resource Protocol”** or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

**“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 metered electrical energy, measured in MWh, which is produced by the Facility.

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

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

**“Expected Energy”** has the meaning set forth in Section 4.7.

**“Expected FCDS Date”** means the date set forth in the deliverability section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

**“Facility”** has the meaning set forth in the Preamble and as further described in Exhibit A attached hereto.

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

**“Final CEQA Approval”** means all of the following with respect to the Facility: (a) the issuance by the County (or other lead agency) of a Notice of Determination and, if necessary, a statement of overriding considerations, in connection with the issuance of a final Environmental Impact Report, (b) the issuance of a Notice of Determination under Section 21152(a) of CEQA by



the Buyer after making the findings required by Section 15096 of the CEQA Guidelines, and (c) with respect to both (a) and (b), above, the expiration of the 30-day period set forth in Section 21167(c) of CEQA, in each case, (i) without the filing of any notice of appeal with respect to the notices properly posted by Buyer, or (ii) in the event of any such challenge, the challenge having been either settled or determined adversely to the challenger by final judgment.

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

**“FMM Schedule”** has the meaning set forth in the CAISO Tariff.

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

**“Forced Outage”** means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

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

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

**“Future Environmental Attributes”** shall mean any and all emissions, air quality and other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/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 (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 and/or air quality permits.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant

markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

**“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*, that “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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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 Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production or investment 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 and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

**“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.

**“Guaranteed Capacity”** means one hundred five (105) MW AC capacity measured at the Delivery Point.

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

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

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.7.

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

**“Indemnified Party”** has the meaning set forth in Section 17.1.

**“Indemnifying Party”** has the meaning set forth in Section 17.1.

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

**“Installed Capacity”** means the actual generating capacity of the Facility, measured at the Delivery Point, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

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

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

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, 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.

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

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated December 19, 2008 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 (i) providing senior or subordinated construction, interim 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, 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 backleverage financing), 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 acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) 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 or a foreign bank with a U.S. branch 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 L.

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

**“Losses”** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), 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”** has the meaning set forth in Exhibit F.

**“Metered Energy”** means the electric energy generated by the Facility, expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use.

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

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

**“Multiplier”** has the meaning set forth in Section 3.9(b).

**“MW”** means megawatts measured in alternating current.

**“MWh”** means megawatt-hour measured in AC.

“**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).

“**Negative LMP Costs**” has the meaning set forth in Section 3.3.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

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

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

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

“**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, facsimile or electronic messaging (e-mail).

“**NQC list**” has the meaning set forth in CAISO Tariff.

“**Participating Intermittent Resource Protocol**” or “**PIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison.

“**Parties**” and “**Party**” have the meaning set forth in the Preamble.

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit, in the amount specified on the Cover Sheet.

“**Permitted Transferee**” means any entity that has, or is controlled by another Person that has, all of the following:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least two (2) 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.

**“Planned Outage”** means the removal of the Facility from service to perform work on specific components that will result in an interruption in delivery of Energy to Buyer (e.g., for annual overhaul, inspections or testing).

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

**“Portfolio Content Category”** means PCC1, PCC2 or PCC3, as applicable.

**“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 Content Category 2”** or **“PCC2”** 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** 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)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Product”** means (i) Energy, (ii) Green Attributes (PCC1) and (iii) Capacity Attributes.

**“Progress Report”** means a progress report including the items set forth in Exhibit G and delivered pursuant to Section 2.3.

**“Prudent Operating Practice”** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the solar photovoltaic electric generation industry for facilities of similar size, type, location, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating

Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

**“Qualified Assignee”** means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s credit support) under this Agreement.

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

**“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 3.9(b).

**“RA Guarantee Date”** means sixty (60) days after the Commercial Operation Date.

**“RA Shortfall Month”** means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.9(b).

**“RA Shortfall Period”** means the period of consecutive calendar months that starts with the calendar month in which the RA Guarantee Date occurs and concludes on the earlier of (i) the second calendar month following the calendar month in which the Effective FCDS Date occurs and (ii) the end of the Delivery Term.

**“RA Showing”** means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

**“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.

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

**“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 Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other

form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“**Replacement Capacity Attributes**” has the meaning set forth in Exhibit F.

“**Replacement Energy**” has the meaning set forth in Exhibit F.

“**Replacement Green Attributes**” has the meaning set forth in Exhibit F.

“**Replacement Green Attributes Value**” has the meaning set forth in Exhibit F.

“**Replacement Product**” has the meaning set forth in Exhibit F.

“**Replacement RA**” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located in the same or similar resource area and of the same RA type.

“**Resource Adequacy Benefits**” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“**Resource Adequacy Requirements**” or “**RAR**” means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“**Resource Adequacy Rulings**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“**SC Set-Up Fee**” has the meaning set forth in Section 4.3.

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

“**Scheduled Energy**” means the Energy included in the Schedule awarded in the applicable CAISO market (which, as of the Effective Date, the Parties intend to be the Day-Ahead Market) and developed in accordance with this Agreement, the operating procedures developed by the



Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“**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.

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

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

“**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 does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“**Settlement Period**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date Certificate to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit J to Buyer.

“**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.

“**sPower**” means Sustainable Power Group, LLC, a Delaware Limited Liability Company.

“**Station Use**” means:

(a) The electric 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

(b) The electric energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

**“System Emergency”** means any condition that: (a) requires, as determined and declared by CAISO or the PTO, 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, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

**“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.

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

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

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

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

**“Ultimate Parent”** means FTP Power, LLC.

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

**“WECC”** means the Western Electricity Coordinating Council or its successor.

**“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 July 15, 2013, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

“**YieldCo**” means an entity (a) in which (i) at least a majority of the voting equity securities are owned, directly or indirectly, by sPower, or (ii) sPower directly or indirectly maintains the right to appoint a majority of the board of directors or similar governing body of such entity (or where the general partner is a wholly owned subsidiary of sPower and other investors are the limited partners), (b) that has issued, or has publicly announced an intention to issue, equity to the public in a registered securities offering, (c) that intends to distribute a significant portion of its cash flows from owned, operating assets to its investors, and (d) that has acquired or intends to acquire, among other assets, projects owned by sPower and its Affiliates.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) 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;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) 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;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

(e) 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;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) 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;

(i) 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;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” shall connote “any or all of”;

(l) 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

(m) 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.

1.3 **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.

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

#### **2.1 Contract Term.**

(a) 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 (“**Contract Term**”).

(b) The effectiveness of the Parties’ rights and obligations pursuant to Articles 3, 4, 6, 7 and 8 of this Agreement is conditioned upon Seller obtaining Final CEQA Approval on or before the CEQA Date. Seller will provide Notice of such approval to Buyer promptly after it is received by Seller. If Final CEQA Approval is not obtained by Seller on or before the CEQA Date, then Buyer shall have the right, in its sole discretion, to terminate this Agreement upon written notice to Seller, effective as of five (5) Business Days following Seller’s receipt of such notice. Upon such termination, neither Party will have any liability to the other Party, and such termination will not constitute or give rise to any Event of Default, any liability of

either Party (other than liabilities which have accrued under this Agreement up to the termination date), or any Termination Payment hereunder.

(c) 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 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

## 2.2 **Conditions Precedent to Delivery Term.**

The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have delivered to Buyer certificates from a licensed professional engineer substantially in the form of Exhibits I-1 and I-2;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all applicable conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after COD, expects to timely complete) all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE 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;

(g) Seller has delivered the Performance Security to Buyer; and

(h) Seller has paid Buyer, or Buyer has drawn on the Development Security, for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** The Parties agree time is of the essence in regards to the Agreement. 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 agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer's failure to perform its obligations hereunder, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90<sup>th</sup>) day after the missed Milestone completion date, as applicable), 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, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

2.5 **Buyer's CEQA Obligations.** From and after the Effective Date, Buyer shall promptly initiate and diligently conduct all required review under CEQA, including coordinating with the "lead agency," and making such findings as are required or permitted to be made by a responsible agency under Section 15096 of the CEQA Guidelines with respect to the Facility. Upon completion of such review, Buyer shall provide and post such notices as are specified in Section 21152(a) of CEQA, as applicable.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Except for Deemed Delivered Energy,

Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA and Replacement Product.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes, attributable to the Metered Energy produced by the Facility.

3.3 **Compensation.** Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead Market price for the applicable Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours, 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**”).

(d) Seller shall receive no compensation from Buyer for Metered Energy or Deemed Delivered Energy during any Curtailment Period, except to the extent such Metered Energy or Deemed Delivery Energy was not subject to a Curtailment Order.

(e) If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default, a Force Majeure Event, or Buyer Bid Curtailment, or (ii) Seller is not able to make available Product due to such Buyer failure or inability, Buyer shall pay Seller, as Seller’s sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period.

3.4 **Imbalance Energy.**

(a) Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible.

Subject to Section 3.4(b), to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

(b) Following the Effective Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the “**Imbalance Energy Cost Protocol**”) to set forth appropriate administrative details to carry out the Parties’ agreement as follows: (i) the Parties shall coordinate to maintain detailed records of all CAISO revenues and charges associated with Imbalance Energy; (ii) for each Contract Year, Seller will be responsible for and shall pay directly (or promptly reimburse Buyer) for fifty percent (50%) of the aggregate Imbalance Energy charges, net of the aggregate Imbalance Energy revenues, allocable to such Contract Year; provided that (A) net Imbalance Energy charges paid directly or reimbursed by Seller will be limited to a maximum of Three Hundred Seventy Five Thousand Dollars (\$375,000) per Contract Year (the “**Imbalance Energy Cost Cap**”), (B) Buyer shall be responsible for and shall pay directly (or reimburse Seller) for all Imbalance Energy charges allocable to such year in excess of the Imbalance Energy Cost Cap, and (C) if the net Imbalance Energy charges paid directly or reimbursed by Seller for a given Contract Year are less than the Imbalance Energy Cost Cap, then within thirty (30) days after the end of such Contract Year, Seller shall pay Buyer an amount equal to the Imbalance Energy Cost Cap, less the net Imbalance Energy charges actually paid directly or reimbursed by Seller for such Contract Year.

3.5 **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.

3.6 **Future Environmental Attributes.**

(a) 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 3.6(a), 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 unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(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, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation for all Test Energy delivered to Buyer as Metered Energy, Buyer shall pay Seller an amount equal to the Contract Price less \$9/MWh; provided, however, that Seller shall receive the full Contract Price for Test Energy if Seller elects to provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA product information is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit H at least 50 Business Days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.8 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.13, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term and subject to Section 3.13, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to cause the Facility to be listed as in construction in the NQC list upon issuing a notice to proceed for the construction of the Facility.

3.9 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller is unable to obtain the deliverability type selected on the Cover Sheet by the RA Guarantee Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as

liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer. Buyer, as Scheduling Coordinator for the Facility, shall use commercially reasonable efforts to coordinate with Seller to obtain the deliverability type selected on the Cover Sheet by the RA Guarantee Date.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied by \$3.00/kW-mo.; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit H at least 50 Business Days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.10 **CEC Certification and Verification.** Subject to Section 3.13, 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 *RPS Eligibility Guidebook, Eighth Edition* (or its successor). 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.

3.11 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’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, with Seller’s costs not to exceed the Compliance Expenditure Cap.

3.12 **California Renewables Portfolio Standard.** Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller’s cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed in Sections 3.13(a), (b) and (c), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at

twenty thousand dollars (\$20,000.00) per MW of Guaranteed Capacity (“**Compliance Expenditure Cap**”):

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions.**”

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.

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 (1) agree to reimburse Seller for the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) **Energy.** Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Metered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties (except as provided in Section 3.4(b)) or congestion charges associated with Metered Energy after its receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Metered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with the Facility or Seller’s violation of applicable regulatory requirements, including failure to respond to ADS. Each Party shall perform all generation,

scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered in accordance with this Agreement. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, 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.

#### 4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) 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 WREGIS.

#### 4.3 Scheduling Coordinator Responsibilities.

(a) 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 both the delivery and the receipt of the Product at the Delivery Point, provided that Buyer shall be responsible for all acts and omissions of any Buyer-designated third party Scheduling Coordinator and for all costs, charges and liabilities incurred by any such third party Scheduling Coordinator to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Buyer and any Buyer-designated third party Scheduling Coordinator shall comply with all obligations as Scheduling Coordinator for the Facility under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms of this Agreement, all applicable Laws, and all CAISO requirements (including the CAISO Tariff). At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or any Buyer-designated third party as Seller's 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 Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's or Buyer's designated third party's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer or in connection with a Buyer Default. Seller is responsible for and shall pay Buyer an amount equal to the actual costs (including the costs of Buyer employees or agents if Buyer acts directly as the Facility's Scheduling Coordinator) reasonably incurred by

Buyer, as a result of Buyer or Buyer's designated third party acting as the Facility's Scheduling Coordinator, including the costs associated with the registration of the Facility with the CAISO and the installation, configuration, and testing of all equipment and software necessary for Buyer or Buyer's designated third party to act as Scheduling Coordinator or to Schedule the Generating Facility ("**SC Set-Up Fee**"); *provided*, that the SC Set-Up Fee shall not exceed Fifty Thousand Dollars (\$50,000). Buyer (as Seller'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 basis, as determined by Buyer. Buyer or Buyer's designated third party (in either case, as Seller's SC) shall promptly make available to Seller all such information as is in its possession and necessary to comply with any requirements of Law applicable to Seller or the Facility, including information necessary for filing of "Electric Quarterly Reports" with FERC and information necessary to enable Seller to comply with NERC Generator Owner/Generator Operator requirements.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, forecast data, all outage requests, Forced Outages, Forced Outage reports, clearance requests, or must offer waiver forms. Seller will 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 facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 3.4(b), Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, 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 be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or 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). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the 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, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, which such actions or inactions are not consistent with the CAISO requirements, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement, including Section 3.4(b). The CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and

supporting documentation from the CAISO reasonably necessary for Seller to validate any such charges or penalties, including information regarding Scheduling by Buyer (as Seller's SC). Notwithstanding the foregoing, Seller acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within thirty (30) 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 these 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 shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller'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.

(f) 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.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

4.4 **Forecasting.** Seller shall provide the forecasts described below. Seller's forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Average Expected Energy. No less than ninety (90) 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 a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in the form set forth in Schedule F-1, or as otherwise reasonably acceptable to Buyer.

(b) Monthly Forecast of Available 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 designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) 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 the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced 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.

(e) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.4(d), Seller will be responsible for a "**Forecasting Penalty**" equal to the absolute value of the Real-Time Price, in each case for each MWh of Energy Deviation, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.4. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, 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.

#### 4.5 **Dispatch Down/Curtailment**

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders (such as Negative LMPs) pursuant to a Buyer Curtailment Order or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or a Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K, and further, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the applicable Contract Price.

(c) Reserved.

(d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated 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 MWh and, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(e) 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 and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment 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 commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Outage.



(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of the Interconnection Agreement or the CAISO Tariff.

(d) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 Expected Energy and Guaranteed Energy Production. The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("Expected Energy"). During the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, Buyer's failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (a) Adjusted Energy Production during such Performance Measurement Period; plus (b) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit F. 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 F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 WREGIS. Seller shall, at its sole expense, but subject to Section 3.13, 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 Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(h), provided that Seller fulfills its obligations under Sections 4.8(a) through (h) below. In addition:

(a) 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 Forward Certificate Transfers from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee 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 Buyer’s WREGIS Account.

(b) Seller shall cause Forward 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 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.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility’s metered data.

(d) 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 Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Metered Energy for the same calendar month (“**Deficient Month**”). If any WREGIS Certificate Deficit is caused by Seller, or the result of any action or inaction, by Seller, then the amount of Metered Energy (MWh) in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (i) provides Replacement Product (as defined in Exhibit F) that is (A) delivered to Buyer at NP 15 EZ Gen Hub, (B) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (C) delivered upon a schedule reasonably acceptable to Buyer, and (D) delivered to Buyer without imposing additional costs upon Buyer; or (ii) provides replacement WREGIS Certificates from the Facility within ninety (90) days after the conclusion of the applicable Deficient Month and such WREGIS Certificates qualify for the same RPS compliance periods during which the WREGIS Certificate Deficit occurred.

(f) 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.

(g) 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 Metered Energy in the same calendar month.

(h) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.

## **ARTICLE 5 TAXES**

5.1 **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 Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). 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. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **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 therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **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, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on

Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities (including a transformer, substation and associated equipment and real property), 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 Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Energy produced by the Facility using a CAISO Approved Meter. Such meter shall be installed on the low side of the Seller's transformer and maintained at Seller's cost. Meter data will be adjusted to reflect losses to the Point of Delivery. The 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 that 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 applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. 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.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

### 8.1 **Invoicing.**

(a) Seller shall make good faith efforts to deliver an invoice to Buyer for Product and Deemed Delivered Energy no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation

of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh produced by the facility as read by the CAISO Approved Meter, the amount of Replacement RA and Replacement Product delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

(b) Buyer, as Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller.

8.2 **Payment.** Buyer shall make payment to Seller for Product and Deemed Delivered Energy 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 receipt of the invoice. 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.

8.3 **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 two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable 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.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s 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 non-erring Party received Notice thereof. Except for adjustments required due to a correction of data by the CAISO, any

adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **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 upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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.

8.6 **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 and Deemed Delivered Energy during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, including pursuant to Section 4.3(d), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the 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 replenish the Development Security by an amount equal to the amount of such Daily Delay Damages within fifteen (15) Business Days 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. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly 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 its Credit Rating, (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 fifteen (15) 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.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer (i) on the Commercial Operation Date if Seller elects to maintain its Development Security with Buyer as Performance Security or (ii) within ten (10) days following the Commercial Operation Date if Seller elects to provide a form of Performance Security which differs from the form of Development Security. Seller shall maintain the Performance Security in full force and effect until the Delivery Term has expired or terminated early, provided that Seller shall maintain such amount of Performance Security equal to the amount of all invoiced but unpaid amounts due from Seller to Buyer. Buyer shall promptly return to Seller the portion of the Performance Security not allocated to invoiced but unpaid amounts pursuant to the prior sentence. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (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 fifteen (15) 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.

8.9 **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):

- (a) 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;
- (b) 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
- (c) 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.

## **ARTICLE 9 NOTICES**

9.1 **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 on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **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: (a) 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; (b) 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; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) 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.

## **ARTICLE 10 FORCE MAJEURE**

### 10.1 **Definition.**

(a) **“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 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.

(b) 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.



(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (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) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (v) 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; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) a Buyer Curtailment Period, or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except if such failure is caused by a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** 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. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) 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; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive three hundred sixty-five (365) day-period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with

respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(b).

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) 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;

(iii) 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, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.3, and except for Seller’s failure to comply with a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, the exclusive remedy for which is provided in Section 4.5(d)) and such failure is not remedied within thirty (30) days after Notice thereof or such longer period necessary to effect such remedy not to exceed ninety (90) days after Notice (A) if such remedy is feasible through the use of commercially reasonable efforts during such period and (B) so long as the Defaulting Party is diligently and continuously pursuing such remedy;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as applicable; or

(vi) 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.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

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

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, 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, if such failure is not remedied within fifteen (15) Business Days after Notice thereof;

(v) Reserved.

(vi) 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 fifteen (15) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) 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;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) 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;

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

(E) 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;

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

(G) 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.

11.2 **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:

(a) 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;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) 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, that 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 remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. 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 (a) 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, (b) the Termination Payment described in this section is a reasonable and appropriate

approximation of such damages, and (c) the Termination Payment described in this section 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.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment 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 shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, 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, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, 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.

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

## **ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, 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, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** 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 TAX BENEFITS, 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 ANY 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 THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.2, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, 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 CONTEXT 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.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

13.1 **Seller’s Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, 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.

(b) 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, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary 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.

(c) 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.

(d) 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.

The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) 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.

(c) 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, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, 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.

(d) 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.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, 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, (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.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) 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 each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) 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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation



made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

**14.2 Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in the case of (a) or (b), the assignee shall be a Qualified Assignee; *provided, further*, that in each such case of (a) and (b), Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller's assignee provides payment security in an amount and form reasonably acceptable to Buyer; *provided, however*, that Seller may initiate the dispute resolution mechanism under Section 16.2 in order to determine whether Seller's assignee meets such definition. Any Change of Control of Seller (whether voluntary or by operation of Law) will require the prior written consent of Buyer, which consent shall not be unreasonably withheld; *provided*, that a Change of Control shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been delivered by Buyer.

**14.3 Permitted Assignment; Change of Control of Buyer.** Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 1.1(b) and (ii) such Person's creditworthiness and ability to perform the obligations of this Agreement are at least equivalent to Buyer's creditworthiness and ability as of the Effective Date. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement or that Buyer's assignee's creditworthiness and ability to perform are at least equivalent to Buyer's creditworthiness and ability as of the Effective Date, then such transfer or assignment shall be void unless either Buyer agrees in writing to remain financially responsible under this Agreement, or Buyer's assignee provides payment security in an amount and form reasonably acceptable to Seller; *provided, however*, that Buyer may initiate the dispute resolution mechanism under Section 16.2 in order to determine whether Buyer's assignee meets such definition. Any assignment by Buyer, 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 accepted by Seller.

## **ARTICLE 15 LENDER ACCOMMODATIONS**

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, Seller may, without the consent of Buyer, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice. Without limiting the foregoing, Buyer acknowledges that, subject to Seller's other obligations under this Agreement, Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities (1) utilizing tax equity investment, or (2) on a portfolio or other aggregated basis, which may include cross-collateralization or similar arrangements.

15.2 **Rights of Lender.** If Seller grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Article 11 and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of Lender upon foreclosure of Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that, as except as provided in any direct agreements between the Buyer and any Lender as contemplated pursuant to Section 15.2(b), Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

15.3 **Cure Rights of Lender.** Buyer shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and Buyer shall accept a cure

performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to the Buyer arising or accruing hereunder. The cure rights of Lender (i) may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender pursuant to Section 15.2(b).

## **ARTICLE 16 DISPUTE RESOLUTION**

16.1 **Governing Law.** This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. 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, 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.

16.3 **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.

## **ARTICLE 17 INDEMNIFICATION**

### **17.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 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 from its sole 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.

17.2 **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 the indemnity provided for in this Article 17 may apply, the Party seeking indemnification (the “**Indemnified Party**”) shall notify the other Party (the “**Indemnifying Party**”) in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that 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* that 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 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, 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.

## **ARTICLE 18 INSURANCE**

### 18.1 **Insurance.**

(a) **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 One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000) 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.

(b) **Employer’s Liability Insurance.** Employers’ Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) 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.

(c) 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.

(d) 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.

(e) 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 the Seller (and Lender if any) as the loss payee.

(f) 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 (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 1.1(f).

(g) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged

violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 19**

### **CONFIDENTIAL INFORMATION**

19.1 **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) proposals and negotiations until this Agreement is approved and executed by the Buyer, 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.

19.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement, or (d) to the recipient’s Affiliates or to any of the recipient’s or its Affiliates’ employees, officers, directors, members, agents, representatives, counsel, accountants or auditors, in each case with a need to know such Confidential Information and which are subject to confidentiality agreements or other enforceable obligations no less protective than this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion provided such information does not include Confidential Information of the other Party.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Public Statements.** Neither Party shall issue (or cause its Affiliates to issue) a public statement regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

## **ARTICLE 20 MISCELLANEOUS**

20.1 **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.

20.2 **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 except pursuant to the process set forth in Section 20.8.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **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 buyer, 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).

20.5 **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.

20.6 **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, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

20.7 **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.

20.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a joint powers authority in accordance with the Joint Powers Act pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. 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.

20.11 **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 16. Notwithstanding the foregoing, 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, or constitute, or form the basis of, a Force Majeure Event.



**EXHIBIT A**

**DESCRIPTION OF THE FACILITY**

**Site Name:**

**APN:**

**County:**

**Guaranteed Capacity:**      **MW AC:**

**P-node/Delivery Point:**

**Additional Information:**

**Provided that the PNode remains the same, Seller shall have an ability to add or remove APNs from the Site, provided that such APNs be in receipt of a final CUP, with Notice to Buyer.**

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility within thirty (30) days after the date for completion of the Construction Start Milestone (as such date may be extended by the Development Cure Period, the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, including the physical movement of soil at the Facility, grading, grubbing, site access preparation or vegetation removal at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility (“**Construction Start**”). On the date of the beginning of construction (the “**Construction Start Date**”), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable by Seller to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer’s default right pursuant to Section 11.2.

#### 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 (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) September 1, 2018 or (y) the first day of the first full month after Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by September 30, 2018 (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller

shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.

- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date until the Commercial Operation Date subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of the following delays:
- a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product by the date for completion of the Documentation of Conditional Use Permit Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller;
  - b. a Force Majeure Event occurs;
  - c. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by the date for completion of the Initial Synchronization Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller;
  - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. 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.

4. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
5. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof, and Seller shall replenish the Development Security to its full amount within three (3) Business Days after such draw.
6. **Damage Payment.** Except for Buyer’s termination right in connection with Section 11.1(b)(2) with respect to the Guaranteed Commercial Operation Date, Buyer’s sole remedy and Seller’s sole liability for the failure of Seller to meet the Guaranteed Construction Start Date and/or the Guaranteed Commercial Operation Date, or for Seller’s failure to reach the Guaranteed Capacity shall be the payment by Seller of Daily Delay Damages, Commercial Operation Delay Damages, or Capacity Damages, as applicable, up to a total aggregate payment no more than the Damage Payment. For the avoidance of doubt, Seller’s total liability to Buyer for Daily Delay Damages, Commercial Operation Delay Damages, Capacity Damages and any other damages under this Agreement prior to the start of the Delivery Term shall not exceed the Damage Payment. If Seller has paid damages to Buyer equal to the Damage Payment, either Party will have a right to terminate this Agreement and neither Party will have any liability to the other Party in connection with such termination except for the obligation specified in Section 2.1(c).

**EXHIBIT C**

**CONTRACT PRICE**

The Contract Price of the Product shall be:

<b>Contract Year</b>	<b>Contract Price</b>
1 – 20	\$ [REDACTED]

**EXHIBIT D**

**EMERGENCY CONTACT INFORMATION**

**BUYER:**

Greg Brehm, Director of Power Resources  
Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Fax No: (415) 459-8095  
Phone No: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

**SELLER:**

Sean McBride, General Counsel  
sPower  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84106  
Fax No: (801) 679-3501  
Phone No: (801) 679-3506  
Email: [smcbride@spower.com](mailto:smcbride@spower.com)

**EXHIBIT E**  
**RESERVED.**

Exhibit E

## EXHIBIT F

### 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 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/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will 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, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

#### **Additional Definitions:**

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

**“Lost Output”** means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using the equation provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation, panel temperature, and wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.



“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Product is being provided.

“**Replacement Energy**” means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“**Replacement Product**” means (a) Replacement Energy and (b) Replacement Capacity Attributes.

**SCHEDULE F-1**

**AVERAGE EXPECTED ENERGY**

[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 G**

### **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 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 month, 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 could potentially 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. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. 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.
13. Any other documentation reasonably requested by Buyer.

**EXHIBIT H**

**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**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] [3.9(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I-1**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Marin Clean Energy (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**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.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%).
- (2) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Transmission System, [Name of Transmission System] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
- (4) The Transmission System has provided documentation supporting full unrestricted release for Commercial Operation by [Transmission System as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
- (5) 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: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I-2**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] 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.

The initial Facility performance test under Seller’s EPC contract for the Facility demonstrated peak Facility 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: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification (“**Certification**”) of the Construction Start Date is delivered by [SELLER ENTITY] (“**Seller**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**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. the EPC Contract related to the Facility was executed on \_\_\_\_\_;
2. the Limited Notice to Proceed with the construction of the Facility was issued on \_\_\_\_\_ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

\_\_\_\_\_ (such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT K**

**BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS**

Operational characteristics of the Facility for Buyer Bid Curtailment and Buyer Curtailment Orders, which in each case must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer, as Scheduling Coordinator, may request that CAISO modify the Master File for the Facility to reflect the findings of a CAISO audit of the Facility and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to CAISO regarding the operational and technical constraints in the Master File for the Facility are accurate and are actually based on physical characteristics of the resource.

- Nameplate capacity of the Facility: 105 MW AC as defined in the Cover Sheet
- Minimum operating capacity: 0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8760 hours
- The Facility will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 5 minutes
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): 20
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): 21
- Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 5 minutes
- Ramp Rate: 5 MW/minute
- Increments of Contract Capacity that can be curtailed: One (1) MW

Illustrative Example:

	Time	Buyer's Order	Seller's Action
	10:00	Curtailment Order (Curtail to 0 MW at 10:10)	Seller implementing order and ramping down from __ MW (10 minutes)
	10:10		At 0 MW

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10:10 – 10:15		At 0 MW (minimum down time of 5 min)
10:15	Seller to return to Schedule (__ MW per the Schedule, at 10:23)	Seller implementing order and ramping up
10:23		At Schedule (__ MW, per the Schedule)

**EXHIBIT L**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

Marin Clean Energy

1125 Tamalpais Avenue

San Rafael, CA 94901

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy (formerly known as Marin Energy Authority) (“Beneficiary”), 1125 Tamalpais Avenue, San Rafael, CA 94901, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry of \_\_\_\_\_, 201\_, subject to automatic extensions provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation in person or by courier to the Issuer

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at [insert bank address] or by fax at facsimile no. (xxx)xxx-xxxx. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry 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.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

(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 Marin Clean Energy (formerly known as Marin Energy Authority), 1125 Tamalpais Avenue, San Rafael, CA 94901, 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 Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2016 (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

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 Marin Clean Energy (formerly known as Marin Energy Authority) 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 Marin Clean Energy by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

\_\_\_\_\_

Name and Title of Authorized Representative

Date\_\_\_\_\_