

Staff Report

To: Sonoma Clean Power Authority Business Operations Committee

From: Geof Syphers, CEO, and Kelly Foley, Regulatory Director and Legal Counsel

Item: Supply contract for power

Date: June 10, 2014

Requested Actions

- (1) Receive a report from the BOC Chair on power contract negotiations, and
- (2) Provide a recommendation to the Board ad hoc on the proposed power contract.

Background

The BOC Chair will provide a report on the Board ad hoc meeting in which a proposed power contract was discussed. The process for review of the contract involved a detailed discussion of the material terms with the ad hoc committee and a discussion of the qualifications of the legal review team and process used to review the technical contract terms.

The Board ad hoc recommends the proposed contract.

Staff provides the following information to supplement the Chair's verbal report:

The proposed power contract is for 30 MW of as-available Category 1 solar power on a 20 year term beginning January 1, 2017. The source will be constructed in California's Central Valley under a project labor agreement.



Because the contract is still under negotiation, the seller's name will not be released until after an agreement is executed. Therefore, Staff represents that the California-based seller has a good record of completed projects and offers collateral in an amount deemed by SCP's outside counsel to be ordinary for insuring against loss associated with the potential for the project to fail to be completed by January 1, 2017.

The estimated volume of energy to be delivered under the contract starts at 84,126 MWh in the first year and gradually declines over the 20 year term. Payments are made for energy as it is delivered.

The volume of energy is consistent with Board adopted policy ensuring that no greater than 30% of total energy is procured under long-term agreements until a more specific resource plan is completed. The volume also allows a significant amount of additional renewable resources to be procured, such as from local Sonoma County sources.

The proposed contract would improve SCP's estimated future financials relative to earlier projections, and support continued competitive rates. The price is lower than five other requested bids for similar amounts of new solar power in California and competitive with known contracts executed in 2014 for similar resources. The price is flat for the entire 20 year term, and includes energy, capacity and green attributes sold together.

The project consists of single-axis tracking photovoltaics, and has all necessary control of land and a completed EIR. The land is former grazing land without prime soils.

SCP's required collateral deposit amount is available through the existing line of credit at First Community Bank, and is consistent with industry standards for collateral from entities without significant reserves. The amount of the collateral deposit has been reviewed by the Board ad hoc, and will be reported on SCP statements following the execution of the contract.



Primary review and negotiation of the legal terms of the proposed contract have been made by Keyes, Fox & Wiedman LLP, a firm specializing in Distributed Generation & Renewable Energy Law with deep experience in this field. Review of the power market terms was lead by Pacific Energy Advisors, SCP's power market consultants, and also by Kelly Foley, SCP's Regulatory Director and Legal Counsel.

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: ██████████ limited liability company

Buyer: Sonoma Clean Power Authority, a California joint powers authority

Effective Date: ██████████, 2014

Description of Facility: As set forth in Exhibit A hereto.

Contract Term: Commencing on the Effective Date and ending on the last day of the Delivery Term, unless otherwise specified herein or extended pursuant to Section 2.1(b).

Delivery Term: Commencing on the Commercial Operation Date and ending twenty (20) years thereafter, unless otherwise specified herein or extended pursuant to Section 2.1(b).

Contract Price:

(a) Product or Replacement Product. The Contract Price for all Product and Replacement Product sold to Buyer pursuant to this Agreement other than Products associated with Excess Energy is \$██████████ per MWh.

(b) Excess Energy Products. The Contract Price for Products (other than Capacity Attributes) associated with Excess Energy sold to Buyer pursuant to this Agreement is equal to eighty percent (80%) of the applicable Contract Price set forth in clause (a) of this definition.

Assets Sold:

- Energy, sold on an as-available, as-generated basis
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - Renewable Energy Credit (Bucket 1)
 - Renewable Energy Credit (Bucket 2)
 - Renewable Energy Credit (Bucket 3)
- Capacity Attributes

Seller’s Development Security: ██████████

Seller’s Performance Security: ██████████

Governing Law: California

Notice Addresses:

Seller:
██████████



Buyer:

[Buyer to populate]

Attention:

Fax No.:

Phone No.:

Email:

Scheduling:

[Name]

Email:

Phone No.:

Fax No.:

With a copy to:

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

SELLER



By: _____
Name: _____
Title: _____

BUYER

Sonoma Clean Power Authority

By: _____
Name: _____
Title: _____

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Exhibits and Schedules:

Exhibit A	Description of the Facility
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Emergency Contact Information
Exhibit D	Output of the Facility
Schedule D-1	Expected Energy
Exhibit E	Milestones
Exhibit F	Quarterly Milestone Progress Reporting Form
Exhibit G	Integration Cost Charge Code
Exhibit H	Form of Commercial Operation Certificate
Exhibit I	Form of Construction Start Certificate
Schedule 3.2	Sample Calculation of Contract Price
Schedule 3.6	Sample Calculation of RA Deficiency Amount

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, and operate the solar photovoltaic generating facility to be located in California in the location identified in Exhibit A (the “**Facility**”); and

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

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 Terms.** Terms used in this Agreement not otherwise defined on the Cover Sheet, in the Preamble or herein shall have the meaning set forth below:

“**Actual RA Damages**” shall have the meaning set forth in Section 3.6(b).

“**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**” shall have the meaning set forth in the Preamble.

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

“**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**” shall have the meaning set forth on the Cover Sheet.

“Buyer Curtailment Period” shall have the meaning set forth in Section 5.2(e).

“Buyer Default” shall have the meaning set forth in Section 12.2.

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

“CAISO Integration Amounts” means all fees, costs and charges that are: (a) at the time such fees, costs and charges come into existence (there are none applicable to generators as of the Effective Date), identified as an “Integration Cost Charge Code” on Exhibit G, as updated by Seller from time to time with the consent of Buyer (not to be unreasonably withheld) due to changes in the CAISO Tariff or changes in CAISO procedures or practices, and (b) assessed by CAISO to Buyer in its capacity as Scheduling Coordinator for the Facility, and (c) result in a charge on Buyer’s Settlement Statement.

“CAISO Integration Amounts Cost Cap” means the maximum dollar amount of CAISO Integration Amounts for which Seller is liable and shall equal (a) in any Contract Year, [REDACTED] and (b) during the Delivery Term, an aggregate of [REDACTED]

“CAISO Settlement Price” means the Locational Marginal Price at the Delivery Point for each Settlement Interval, or, in the case of Replacement Product delivered to another CAISO node in accordance with Exhibit D, the LMP at such CAISO node for such deliveries of Replacement Product.

“CAISO Tariff” means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto, as may be amended or supplemented from time to time.

“Calculation Period” means the twenty-four (24) month period commencing two (2) years after the Commercial Operation Date and each subsequent twenty-four (24) month period thereafter.

“California Public Records Act” has the meaning set forth in California Government Code Section 6250 *et seq.*, as amended or supplemented from time to time.

“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” shall have 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 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 produced by the Facility qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**Change in Compliance Costs**” means the adoption, promulgation, modification, or re-interpretation after the Effective Date (or the taking of any other action by any Governmental Authority) of or with respect to any Law that materially affects the obligations and requirements under this Agreement related to the Facility’s compliance, reporting and eligibility requirements, including but not limited to certification as a Participating Intermittent Resource, an Eligible Renewable Energy Resource, WREGIS compliance, Green Attributes conveyance, and the provision of Capacity Attributes and Resource Adequacy Benefits.

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

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

“**Commercial Operation Delay Damages**” shall have the meaning set forth in Exhibit B.

“**Confidential Information**” shall have the meaning set forth in Section 20.1.

“**Construction and Capacity Damages**” shall mean, collectively, Construction Delay Damages, Commercial Operation Delay Damages, and Capacity Damages.

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

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

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

“**Contract Capacity**” means at least 30 MW, as measured by the sum of the inverter nameplate capacity of the Facility.

“**Contract Price**” shall have the meaning set forth on the Cover Sheet.

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

“**Contract Year**” means the twelve (12) month period commencing on the Commercial Operation Date and each successive twelve (12) month period thereafter during the Delivery Term.

“**Costs**” means, with respect to the non-defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by that Party in entering into any new arrangement which replaces this Agreement.

“**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 Period**” means any of the following:

a) CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (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 reasons including, but not limited to, (i) any operating 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) CAISO orders, directs, alerts or provides notice to a Party, as a result of physical operational constraints on the CAISO electric system, to reduce Energy production from a Facility to a level lower than the amount of Energy forecasted to be produced by the Facility for the same period of time as determined reasonably by Seller pursuant to this Agreement;

d) 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

e) a curtailment in accordance with Seller’s obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

“**Deemed Energy Calculation**” has the meaning set forth in Section 5.3(a).

“**Deemed Energy Generation**” means the amount of electric energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but for a curtailment event arising under Section 5.2, which amount shall be equal to (i) the amount of MWh provided for in the EIRP Forecast applicable to the curtailment event, regardless of whether Seller is participating in the EIRP during the curtailment event, less (ii) the amount of Facility Energy delivered to the Point of Delivery during the curtailment event, if any, or, if there is no EIRP Forecast available, (A) an amount of MWh calculated based on an equation that incorporates relevant Facility availability, weather and other pertinent data for the period of time during the

curtailment event in order to approximate the amount of Energy that would have been delivered, less (B) the amount of Energy delivered to the Delivery Point during the curtailment event, if any; provided that, if the applicable difference calculated pursuant to either of the formulas provided above is negative, the Deemed Energy Generation shall be zero (0). The equation in (A) and (B) shall be subject to review and approval by Buyer.

“**Delivery Point**” means the PNode designated by CAISO for the Facility at the 230kV breaker position of the Facility’s 230 kV switching station connecting to PG&E’s [REDACTED] Transmission Lines.

“**Delivery Term**” shall have the meaning set forth on the Cover Sheet.

“**Development Security**” means (i) cash, (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, (iii) a guaranty issued by a Person with a Credit Rating of at least A- from S&P or A3 from Moody’s, or (iv) any combination of the foregoing, in each case in an aggregate amount equal to [REDACTED].

“**Effective Date**” shall have the meaning set forth on the Cover Sheet.

“**EIRP Forecast**” means the final forecast of the Energy to be produced by the Facility prepared by CAISO in accordance with the Eligible Intermittent Resources Protocol for use in submitting a Schedule for the output of the Facility in the Real-Time Market.

“**Eligible Intermittent Resources Protocol**” or “**EIRP**” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

“**Eligible Renewable Energy Resource**” or “**ERR**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a) and (2), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy, measured in MWh, that is produced by the Facility.

“**Event of Default**” means, as applicable, either a Seller Default or Buyer Default as specified in Article 12.

“**Excess Energy**” means, in any Contract Year, any Energy delivered in excess of one hundred twenty percent (120%) of the Expected Energy for such Contract Year.

“**Expected Energy**” means, for the relevant Contract Year, the estimated Energy to be delivered from the Facility as set forth on Schedule D-1 for such period to be updated in accordance with Section 2(a) of Exhibit B.

“**Facility**” means the facility described more fully in Exhibit A attached hereto.

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

“Force Majeure Event” shall have the meaning set forth in Section 11.1.

“Forced Facility 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 Settlement Amount” means the non-defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the non-defaulting Party’s Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the non-defaulting Party. If the non-defaulting Party’s Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars (\$0). The Forward Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“Full Capacity Deliverability Status Finding” or **“FCDS Finding”** means a written confirmation from CAISO that the Facility is eligible for FCDS.

“Future Environmental Attributes” means any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under applicable state 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 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 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 its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green 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 project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“Guaranteed Capacity” shall have the meaning set forth on Exhibit A.

“Guaranteed Commercial Operation Date” means the date specified in Exhibit B.

“Guaranteed Construction Start Date” means the date specified in Exhibit B.

“Guaranteed Output” means, for each Calculation Period, one hundred sixty percent (160%) of the Expected Energy during such Calculation Period.

“Indemnified Party” shall have the meaning set forth in Section 18.1.

“Indemnifying Party” shall have the meaning set forth in Section 18.1.

“Installed Capacity” means the sum of the Inverter Capacities of all the installed inverter units at the Facility, expressed in MW.

“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 Delivery 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 9.2.

“**Inverter Capacity**” means the manufacturer’s output rating (expressed in MW) of the electrical current inverter, as indicated on the nameplate physically attached to such inverter.

“**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.

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or 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 lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Lien**” means any mortgage, pledge, lien (including mechanics’, labor or materialmen’s liens), charge, security interest, encumbrance or claim of any nature.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in Appendix C of 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 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 Resource Adequacy Benefits.

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

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

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

“**MWh**” means megawatt-hour.

“**Output Event of Default**” has the meaning set forth in Exhibit D.

“**Outside Commercial Operation Date**” means 270 days after the Guaranteed Commercial Operation Date (as may be extended pursuant to Exhibit B).

“**Partial RA Factor**” has the meaning set forth in Section 3.6(c)(i).

“**Participating Intermittent Resource Program**” or “**PIRP**” means CAISO’s intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000 or any successor program that Buyer determines accomplishes a similar purpose.

“**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 Pacific Gas and Electric Company.

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

“**Payments in Lieu of Performance**” shall have the meaning set forth in Exhibit D.

“**Performance Security**” means (i) cash, (ii) an irrevocable, non-transferable standby letter of credit issued by a U.S. commercial bank, or a U.S. branch or subsidiary of a foreign commercial bank with a Credit Rating of at least A- from S&P or A3 from Moody’s, (iii) a guaranty issued by a Person with a Credit Rating of at least A- from S&P or A3 from Moody’s, or (iv) any combination of the foregoing, in each case in an aggregate amount equal to [REDACTED].

“**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.

“**PPT**” means Pacific Prevailing Time, meaning prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

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

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for the applicable RA Shortfall Month as calculated in accordance with Section 3.6.

“RA Shortfall Measurement Period” means a period after which Seller’s FCDS Notification has occurred and prior to the applicable RAR Showing deadline, measured commencing on the first day of the month following the Commercial Operation Date and concluding on the last day of the month that occurs immediately prior to the first Showing Month.

“RA Shortfall Month” means the applicable month within the RA Shortfall Measurement Period for purposes of calculating an RA Deficiency Amount under Section 3.6.

“RA Value” means ████████/MW/month.

“RAR Showing” means the resource adequacy requirements compliance showing (or similar or successor showings) that a load serving entity is required to make to CAISO.

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

“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; 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” 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 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 Product” means (a) Replacement Energy, (b) Replacement Capacity Attributes, and (c) all Renewable Energy Credits and Green Attributes of such Replacement Energy.

“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 (such obligations (or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe), the **“Resource Adequacy Obligations”**) and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Capacity” means the megawatt amount that CAISO recognizes from a Facility that qualifies for Buyer’s Resource Adequacy Obligations and is associated with the Facility’s Capacity Attributes.

“Resource Adequacy Obligations” shall have the meaning set forth in the definition of the term “Resource Adequacy Benefits” in this Section 1.1.

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

“Schedule” or **“Scheduling”** means the actions of Buyer and the persons conducting scheduling on behalf of Buyer, their authorized representatives, and their transmission providers, if applicable, of notifying, requesting and confirming to CAISO the amounts of Energy and Replacement Product expected to be delivered consistent with the Scheduling interval at the Delivery Point on any given date during the Delivery Term, all in the manner contemplated by the CAISO Tariff.

“Scheduling Coordinator” means an entity certified by 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” shall have the meaning set forth on the Cover Sheet.

“Seller Default” shall have the meaning set forth in Section 12.1.

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

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

“Shortfall Amount” means, in each Calculation Period, the difference between the Guaranteed Output and the amount of Product actually delivered.

“Showing Month” means the month that is the subject of the RAR Showing, as set forth by the CPUC.

“**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 Form of Construction Start Date Certificate in Exhibit I 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 of the Site under a lease; or (c) is the holder of an easement, right-of-way grant, or similar instrument with respect to the Site.

“**Solar NQC Factor**” means the applicable monthly solar factor for a particular month and calendar year as published in CAISO’s Final Net Qualifying Capacity List.

“**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 Delivery 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**” means the sum of the Forward Settlement Amount plus all amounts owed by the defaulting Party to the non-defaulting Party under this Agreement, less any amounts owed by the non-defaulting Party to the defaulting Party determined as of the date of termination.

“**Test Energy**” means the Energy produced by the Facility delivered commencing on the first date that CAISO informs Seller in writing that Seller may deliver Energy from the Facility to CAISO and ending when Seller advises Buyer of the occurrence of the Commercial Operation Date.

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

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

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” when used as a conjunction 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.

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 last day of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**").

(b) Eighteen (18) months prior to the expiry of the initial Delivery Term and the first five-year extension of the Delivery Term (if agreed), the Parties shall negotiate in good faith an agreement for the Parties to extend the Delivery Term at a mutually agreeable Contract Price for an additional five-year period.

(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 20 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. Subject to Section 3.5, Buyer shall have no obligation whatsoever to purchase the Product from the Facility under this Agreement until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer a completion certificate from an independent engineer substantially in the form of Exhibit H;

(b) All applicable agreements between Seller and CAISO required for the performance of Seller's obligations under this Agreement have been executed, delivered and shall remain in full force and effect, including a Participating Generator Agreement, a Meter Service Agreement, and a copy of each agreement delivered to Buyer;

(c) All applicable agreements between Seller and the PTO, including an Interconnection Agreement, have been executed, delivered and shall remain in full force and effect and a copy of each agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Facility have been obtained and shall remain in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification (and will reasonably expect to receive in no more than six (6) months from the Commercial Operation Date the final CEC Certification and Verification) for the Facility;

(f) 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 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 similar requirements applicable to Seller to enable Buyer to fulfill its RPS requirements; and

(g) Seller shall have provided to Buyer Performance Security in accordance with Section 9.10.

2.3 **Failure to Satisfy Conditions Precedent.** If Seller fails to complete the conditions precedent set forth in Section 2.2 by the Outside Commercial Operation Date, then either Party shall have the right to terminate this Agreement, and neither Party shall have any further liability hereunder; provided, however, to the extent that neither Party elects to exercise such termination right, Seller shall be obligated to continue to pay the liquidated damages set forth in Exhibit B until the termination of this Agreement or the satisfaction of the conditions precedent set forth in Section 2.2(a).

2.4 **Progress Reports.** Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit F.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** In accordance with and subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Energy, Green Attributes and Capacity Attributes produced by the Facility (as and when the same is produced) at the Contract Price.

3.2 **Contract Price.** During the Delivery Term, Buyer shall pay Seller the applicable Contract Price for all Product generated by the Facility, calculated based on all Energy deliveries by Seller to Buyer at the Delivery Point. For the avoidance of doubt, the Contract Price for Excess Energy shall be [REDACTED] of the Contract Price for Product and Replacement Product.

3.3 **Ownership of Renewable Energy Incentives.** During the Contract Term:

Seller shall have all right, title and interest in and to all Renewable Energy Incentives that are available with respect to the Facility or as a result of Energy being produced by the Facility. Buyer acknowledges that such Renewable Energy Incentives relating to such Renewable Energy Incentives belong to Seller. If any such Renewable Energy Incentives are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives to be assigned or transferred to Seller without delay. Buyer agrees to indemnify, defend, hold harmless and compensate Seller for any losses, claims, liabilities, or expenses arising out of or resulting from Buyer

claiming any right with respect to the Renewable Energy Incentives not expressly granted to Buyer under this Agreement. Buyer shall cooperate with Seller in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.4 **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. In such event, Buyer shall notify Seller of its intent to claim such Future Environmental Attributes within sixty (60) days of the date on which such Law becomes effective. 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 transferring, qualifying, verifying and registering such Future Environmental Attributes to Buyer, and Buyer shall notify Seller of its election to pay such costs within forty-five (45) days after such costs are determined by the Parties; provided, that if Buyer does not notify Seller of its election to pay such costs within such forty-five (45) day period, Seller shall retain all right, title and interest in and to 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 pay costs associated with transferring, qualifying, verifying and registering such Future Environmental Attributes pursuant to Section (a)3.4(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 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.

3.5 **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, Green Attributes and Capacity Attributes made available prior to the Delivery Term. During such period of availability prior to the Delivery Term, Buyer shall be obligated to purchase from Seller all such Test Energy, Green Attributes and Capacity Attributes attributable to the Test Energy produced by the Facility, at an amount equal to

[REDACTED]

3.6 **Capacity Attributes.**

(a) During the Delivery Term and any period during which Seller delivers

Test Energy to Buyer:

(i) Seller shall be responsible for the cost and installation of any network upgrades associated with the Facility;

(ii) Seller shall use commercially reasonable efforts to obtain and maintain Full Capacity Deliverability Status for the Facility and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller;

(iii) Seller shall grant, pledge, assign and otherwise commit to Buyer all of the Capacity Attributes from the Facility; and

(iv) Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(b) If Seller is unable to obtain a Full Capacity Deliverability Status Finding as of the Commercial Operation Date, then (i) until the first anniversary of the Commercial Operation Date, Seller shall pay 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, calculated in accordance with Section 3.6(c) below, and (ii) on or after the first anniversary of the Commercial Operation Date, Seller shall pay Buyer the actual damages Buyer suffers due to the failure of Seller to provide the Resource Adequacy Benefits that would have been provided should Seller have obtained a Full Capacity Deliverability Status Finding (“**Actual RA Damages**”); provided, that in lieu of paying such liquidated damages or actual damages, as applicable, Seller may deliver alternative Capacity Attributes equivalent to those that would have been provided by the Facility for such RA Shortfall Month if the Facility had Full Capacity Deliverability Status. The Parties acknowledge and agree that the payment of RA Deficiency Amounts or Actual RA Damages, as applicable, shall be the sole and exclusive remedy for Seller’s failure to obtain or maintain Full Capacity Deliverability Status.

(c) If Seller is obligated to pay liquidated damages pursuant to Section 3.6(b)(i), Seller shall calculate the RA Deficiency Amount using the formula set forth in Section 3.6(c)(i) below for each RA Shortfall Month and shall notify Buyer of such amount no later than the last day of the applicable RA Shortfall Month. Seller shall pay the RA Deficiency Amount monthly in the form of a deduction from the amount invoiced by Seller in such month pursuant to Article 9. In the event that the RA Deficiency Amount payment due in any month exceeds the invoiced amount pursuant to Article 9, Buyer shall not make any payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount payment shall be included in the following month’s invoiced amount, until the full amount has been deducted. Any dispute with regard to the calculation of any RA Deficiency Amount shall be resolved in accordance with Article 17.

(i) The RA Deficiency Amount shall be equal to the product of (v), (w), (x), (y) and (z) where: (v) is the RA Value, (w) is the Guaranteed Capacity, (x) is the Solar NQC Factor, and (y) is one (1.0) minus the Partial RA Factor. The RA Deficiency Amount for Buyer is represented by the following equation:

RA Deficiency Amount (\$/Month) = RA Value (\$/MW/Month) * Guaranteed Capacity (MW) * Solar NQC Factor * [1.0 - Partial RA Factor]

where the “**Partial RA Factor**” is equal to the Facility’s net qualifying capacity divided by the Facility’s qualifying capacity, as assigned by CAISO, the CPUC or other applicable Governmental Authority, as determined by allocating the Facility qualifying capacity ratably to the Facility and any other generating facility which shares the capacity designation. The Partial RA Factor shall never be greater than one (1.0) or less than zero (0). If either the qualifying capacity or the net qualifying capacity has not been assigned to the Facility for the applicable month, the Partial RA Factor shall be equal to zero (0).

Partial RA Factor = Net Qualifying Capacity (MW) / Qualifying Capacity (MW)

For purposes of illustration only, a sample calculation of an RA Deficiency Amount is provided in Schedule 3.6.

(d) If Seller is obligated to pay Actual RA Damages pursuant to Section 3.6(b)(ii), Buyer shall notify Seller of the amount of damages it has incurred no later than the last day of each applicable month in which Seller has failed to achieve Full Capacity Deliverability Status for the Facility. Seller shall pay the Actual RA Damages monthly in the form of a deduction from the amount invoiced by Seller in such month pursuant to Article 9. In the event that the Actual RA Damages payment due in any month exceeds the invoiced amount pursuant to Article 9, Buyer shall not make any payment to Seller for that month, and the difference between the invoiced amount and the Actual RA Damages payment shall be included in the following month’s invoiced amount, until the full amount has been deducted. Any dispute with regard to the calculation of any Actual RA Damages shall be resolved in accordance with Article 17.

(e) To the extent that information is required by Buyer from Seller to complete its plans related to Resource Adequacy (as defined in the CAISO Tariff), Seller shall promptly provide such information at no additional cost to Buyer.

3.7 CEC Certification and Verification. Subject to Sections 2.2(e) and 3.10, 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 Contract Term.

3.8 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; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1). 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. The term “commercially reasonable efforts” as used in this Section 3.8 means efforts consistent with and subject to Section 3.10.

3.9 **California Renewables Portfolio Standard.** Subject to Sections 2.2(e) and 3.10, Seller shall take all 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; provided that Buyer, at Seller's request and sole cost (which shall only include documented third party costs), shall use commercially reasonable efforts to assist Seller and cooperate with Seller, as necessary, in connection with such actions.

3.10 **Change in Compliance Costs.** Seller shall deliver written notice to Buyer sixty (60) days after any change, amendment, repeal or enactment of Law which results in the occurrence of any Change in Compliance Costs, which notice shall describe in reasonable detail the Change in Compliance Costs, its effects on Seller or the Facility, and the additional costs associated with remedial measures or other expenses to be undertaken with respect to Seller or the Facility. Seller shall pay all such costs up to a maximum of [REDACTED]. Seller shall provide all information reasonably requested by Buyer to verify any Change in Compliance Costs. In the event such costs exceed the maximum in a Contract Year, Seller shall have no responsibility to pay such costs and Seller shall submit an invoice to Buyer for such costs in accordance with Section 9.1. Buyer shall have sixty (60) days to evaluate such notice, and shall, by the end of such period, either (i) agree to reimburse Seller for all or some of the costs that exceed the maximum established herein, or (ii) waive Seller's obligation to take such actions, or any part thereof for which Buyer has not agreed to reimburse Seller and, in either case, Seller shall not be in default under this Agreement for failure to meet any Law or requirement related to such Change in Compliance costs for such Contract Year. In the event Buyer waives Seller's obligation pursuant to (ii) above, this Agreement shall remain in effect (without any reduction in Buyer's obligations hereunder to purchase or pay for all Product), and Buyer and Seller shall work in good faith to try and revise this Agreement to minimize the impact of such waiver on Buyer without materially impacting the economic benefits or burdens of the Parties.

ARTICLE 4 DELIVERY; TITLE; RISK OF LOSS

4.1 Delivery.

(a) **Energy.** During the Delivery Term and any period during which Seller delivers Test Energy to Buyer:

Seller shall make available, and Buyer shall accept delivery at the Delivery Point of, all Energy produced by the Facility on an as-generated, instantaneous basis. Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission service (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to the Delivery Point. Buyer shall (i) arrange and be responsible for transmission service at and from the Delivery Point, (ii) bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Point, (iii) schedule or

arrange for Scheduling Coordinator services with its transmission providers to receive the Product at the Delivery Point, and (iv) be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point. The Parties agree to use commercially reasonable efforts to comply with all applicable policies of CAISO in connection with the scheduling and delivery of Energy hereunder.

(b) Green Attributes. During the Delivery Term and any period during which Seller delivers Test Energy to Buyer:

Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Facility to Buyer 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 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; CAISO Cost Allocation; Participation in PIRP.

(a) Throughout the Delivery Term and any period during which Seller delivers Test Energy to Buyer, Buyer shall serve as Scheduling Coordinator and Schedule, or arrange for Scheduling Coordinator services to Schedule, the receipt of Energy and Replacement Product at and from the Delivery Point, in accordance with CAISO scheduling protocols. If Buyer designates a third party to act as its Scheduling Coordinator, Buyer shall provide Seller ten (10) Business Days advance notice of such designation.

(b) Subject to Section 4.3(c) and Section 4.3(d), Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point, and shall be solely responsible for all acts and omissions of Buyer or its designee for all costs, charges and liabilities incurred by Buyer or its designee acting as the Scheduling Coordinator, including CAISO Scheduling Coordinator costs and CAISO charges and penalties (including imbalance or deviation charges). Accordingly, Buyer, as Scheduling Coordinator, shall be financially responsible for all charges, costs, payments and credits on all Settlements Statements issued by CAISO except as provided in Section 4.3(c) and Section 4.3(d).

(c) Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement (i) incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement, including the forecasting requirements in Section 4.4, (ii) incurred by Buyer because of any scheduled outages for which insufficient notice has been provided under this Agreement, (iii) to the extent arising as a result of Seller's failure to comply with a curtailment pursuant to Section 5.2(e) if such failure results

in incremental costs to Buyer, (iv) incurred by Buyer if Seller fails to comply with PIRP or any additional protocols issued by CAISO for a participating Intermittent Resource, pursuant to Section 4.3(e), and (v) incurred by Buyer if Seller fails to comply with any CAISO tariff rules or other CAISO or PTO rules or orders.

(d) In addition to any costs or charges for which Seller is liable pursuant to this Agreement, Seller shall also be liable for CAISO Integration Amounts, up to the amount of the CAISO Integration Amounts Cost Cap. For the avoidance of doubt, CAISO Integration Amounts do not include any CAISO or other costs or charges associated with Buyer's receipt of Energy or Replacement Energy at the Delivery Point or the scheduling or transmission of Energy from and away from the Delivery Point (including any costs or charges associated with imbalances from forward schedules submitted to CAISO), all of which shall be the sole responsibility of Buyer (subject to Section 4.3(b)).

(e) If Buyer elects to have the Facility participate in PIRP, (i) Seller shall, at its sole cost (A) comply with all rules and regulations regarding PIRP including engineering, operation and maintenance of communication equipment required by the CAISO; (B) provide Buyer with a copy of the notice from CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification; (C) participate in and comply with PIRP and all additional protocols issued by CAISO for a Participating Intermittent Resource or (D) if PIRP is no longer available by CAISO, then all protocols, rules or regulations issued by CAISO for generating facilities providing energy on an intermittent basis, and (ii) Buyer in its capacity as Seller's Scheduling Coordinator shall (A) facilitate communication with CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller's obligations to participate in PIRP and (B) bear all ongoing costs of participating in PIRP, including all forecasting fees.

4.4 Forecasting. During the Delivery Term and during its delivery of Test Energy to Buyer, Seller shall provide the Available Contract Capacity forecasts described below. Seller's availability forecasts below shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Contract 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 Contract Capacity. By December 1 for each Contract Year, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Contract Capacity for an average day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Contract Capacity. Ten (10) Business 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 Contract Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Contract Capacity. During the Delivery Term, if the Available Contract Capacity has changed from the monthly forecast of Available

Contract Capacity described in subsection (b), above, Seller or Seller's agent shall provide a non-binding day ahead forecast of Available Contract Capacity to Buyer or Buyer's designee (as applicable).

During the Delivery Term and any period during which Seller delivers Test Energy to Buyer, Seller shall notify Buyer (or Buyer's designee) of any changes in Available Contract Capacity of one (1) MW or more as compared to the daily forecast of Available Contract Capacity, as soon as reasonably possible. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Contract Capacity, the expected end date and time of such event, the expected Available Contract Capacity in MW, and any other information required by CAISO or reasonably requested by Buyer.

4.5 **Events Downstream of the Delivery Point.** Seller shall be responsible for all interconnection, electric losses and transmission arrangements and costs required to make available Energy and Test Energy from the Facility to the Delivery Point. Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point to points beyond.

ARTICLE 5

REDUCTIONS IN DELIVERY; TEMPORARY SHUTDOWN

5.1 **Delivery Obligation.** Seller shall make Product available to Buyer pursuant to this Agreement on an as-generated, instantaneous basis. Seller's failure to make Product available to Buyer shall not give the Buyer the right to any damages other than as set forth in Section 12.1(i) and Exhibit D.

5.2 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 5.1 or Exhibit D:

(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 Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with notice and expected duration (if known) of any Forced Facility 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 Period pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 7.2.

(e) **Optional Curtailment Period.** In addition to the curtailments described in Section 5.2(a)-(d), Buyer shall have the right to curtail deliveries of Energy at any time and for the duration specified by Buyer (each such Buyer-directed curtailment, a "**Buyer Curtailment**").

Period”), subject to Buyer’s obligation to pay the Contract Price for Deemed Energy Generation in accordance with this Section 5.2(e). Buyer shall provide a minimum of ten (10) minutes’ notice to Seller of a request for a Buyer Curtailment Period under this Section 5.2(e), and Seller shall comply with such request in accordance with Prudent Operating Practice. In its curtailment notice to Seller, Buyer shall indicate the duration of the proposed Buyer Curtailment Period, which shall be for a minimum of thirty (30) minutes, and the time at which Buyer requests Seller to resume delivery of the Energy to Buyer. To the extent Buyer requests any change in the duration of the requested Buyer Curtailment Period, Seller shall effectuate any such change no later than ten (10) minutes following notice from Buyer’s notification to Seller of the proposed change to such Buyer Curtailment Period. Seller shall respond to Buyer’s curtailment notices (including the end of such curtailment periods) in accordance with Prudent Operating Practices. Buyer shall pay Seller for any Deemed Energy Generation during any curtailment under this Section 5.2(e) in an amount equal to the Contract Price.

(f) Excess Deliveries. Buyer shall not be obligated to accept delivery of Energy in excess of the product of (A) the Guaranteed Capacity *multiplied* by (B) the Settlement Interval, during any Settlement Interval.

5.3 **Buyer’s Failure to Take Energy**.

(a) Compensation for Unexcused Failure to Take or Buyer Default. 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 or a Force Majeure Event, or (ii) Seller is not able to make available Product due to a Buyer Default, Buyer shall pay Seller an amount equal to the product of (1) the Deemed Energy Generation for such period and (2) the Contract Price (the “**Deemed Energy Calculation**”).

(b) Information Sharing for Deemed Energy Generation. Seller shall provide Buyer with a calculation of the amounts due under this Section 5.3, and shall provide all relevant data used for the Deemed Energy Calculation at Buyer’s request. Any amounts due for Deemed Energy Generation shall be included on the monthly invoice, and disputes thereof shall be handled in accordance with Article 9.

ARTICLE 6

TAXES

6.1 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 Energy (and any contract associated with the Energy) arising before the Delivery Point, including ad valorem taxes and other taxes attributable to the Facility, land, land rights or interest in land for the Facility. Buyer shall pay or cause to be paid all Taxes on or with respect to the 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 Party for such Taxes; provided, however if Buyer is required by law or regulation to remit or pay Taxes which are Seller’s responsibility hereunder, Buyer may deduct such amounts from monthly Product payments to Seller made pursuant to Article 9. 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.

6.2 **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 7 MAINTENANCE OF THE FACILITY

7.1 **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.

7.2 **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 C 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 8 METERING

8.1 **Metering**. During the Delivery Term and during its delivery of Test Energy to Buyer, Seller shall measure the amount of Energy produced at the Facility and delivered to the Delivery Point using a commercially available, CAISO revenue-grade metering system adjusting for any applicable transformation losses and transmission losses to the Delivery Point in accordance with a methodology reasonably agreed to by Buyer. 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 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.

8.2 **Meter Verification.** At least annually during the Delivery Term, or if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request (limited to once every Contract Year), 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 plus or minus 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 prior invoices shall be adjusted for the amount of the inaccuracy during one-half of the period of time since the last meter read. The cost of such tests shall be borne by Seller; provided that Buyer shall reimburse Seller for the costs of any such test requested by Buyer if such test indicates that a meter is not inaccurate by more than plus or minus one percent (+/- 1%).

ARTICLE 9 INVOICING AND PAYMENT; CREDIT

9.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) Business Days after the end of the prior monthly billing period during the Delivery Term. During Seller's delivery of Test Energy, Seller shall make good faith efforts to deliver an invoice to Buyer (i) for Test Energy within ten (10) Business Days after the end of the prior monthly billing period and (ii) for Renewable Energy Credits attributable to the Test Energy within ten (10) Business Days after Seller transfers the WREGIS certificates to Buyer's account and Buyer accepts the transfer.

9.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Such payment shall occur within twenty (20) days following the date Seller sent the invoice to Buyer. 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 at the Interest Rate. If any other payment that is due and owing from one party to another is not paid on or before its applicable due date, payment will be considered late and will bear interest on the unpaid balance at the Interest Rate. Interest 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 three percent (3%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, interest shall begin to accrue on the next succeeding Business Day.

9.3 **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, at address for Seller set forth on the Cover Sheet. If Buyer chooses to exercise its audit rights under this Section 9.3, any third party costs, incidental expenses (including travel), and related charges associated with Buyer's exercise of this provision shall be the responsibility of the Buyer.

9.4 **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 9.5, 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 next monthly invoice 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 9.2, accruing from the date on which such payment is due.

9.5 **Billing Disputes.** Either Party may dispute invoiced amounts, but shall pay to the other Party the entire invoiced amounts (other than amounts that are obvious clerical errors) on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 17. When the billing dispute is resolved, the Party owing, if any, shall pay the amount owed within five (5) Business Days of the date of such resolution, with interest calculated on the amount owed in accordance with Section 9.2, accruing from the date on which such payment is due. Either Party at any time may offset against any and all amounts that may be due and owed to Seller under this Agreement, any and all undisputed amounts, including damages and other payments, that are owed by Seller to Buyer pursuant to this Agreement.

9.6 **Payments Due Buyer.** Buyer shall invoice Seller promptly for any Construction and Capacity Damages owed pursuant to Exhibit B or Payments in Lieu of Performance owed pursuant to Exhibit D. During the Delivery Term and during Seller's delivery of Test Energy, Seller shall deduct any payments due to Buyer in accordance with Exhibit D from the invoice for the month in which such amount becomes due to Buyer. In the event that, for any month, amounts due to Buyer exceed amounts due to Seller for such month, Seller shall provide payment to Buyer for the excess amount within twenty (20) days from the end of the prior monthly billing period.

9.7 **Buyer's Revenue Maintenance.** During the Contract Term, Buyer shall:

(a) within ninety (90) days of the Effective Date, post collateral in an aggregate amount of [REDACTED] until Buyer has one million dollars (\$1,000,000) in tangible assets or five million dollars (\$5,000,000) in net assets; and

(b) have anticipated and actual gross revenues in excess of (i) during the fiscal year commencing on July 1, 2014 and ending on June 30, 2015, [REDACTED] and (ii) at all other times throughout the Contract Term, for each fiscal year, [REDACTED]

Buyer shall cooperate with Seller or any Lender, to provide such documentation reasonably requested by Seller or any Lender in order to verify Buyer's compliance with this Section 9.7 or to assess Seller's financial condition.

9.8 **Buyer's Credit Rating.** The conditions in Section 9.7 shall not apply if Buyer maintains a Credit Rating of at least an A3 by Moody's and at least an A- by S&P during the specified time period.

9.9 Seller's Development Security. Within ninety (90) days of the Effective Date, Seller shall deliver Development Security to Buyer pursuant to the terms set forth in Exhibit B. Seller shall maintain the Development Security in full force and effect until the earlier of (i) the Commercial Operation Date, (ii) payment of any Capacity Damages pursuant to Exhibit B, if applicable, or (iii) forty (40) days after termination of this Agreement. Within thirty (30) days of the expiration of Seller's obligation hereunder, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with Exhibit B. In the event that the Development Security is a letter of credit or parent guarantee and the issuer of such letter of credit or guarantee (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit or guarantee and such letter of credit or guarantee expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit or guarantee by such issuer, Seller shall have ten (10) days to post cash or deliver a substitute letter of credit or parent guaranty that meets the requirements set forth in the definition of Development Security.

9.10 Seller's Performance Security. On or prior to the Commercial Operation Date, Seller shall deliver Performance Security to Buyer which, if not in the form of cash, is in form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect during the Delivery Term and thereafter until such time as Seller has satisfied all monetary obligations that survive any termination of this Agreement, not to exceed one year following the end of the Delivery Term. Within thirty (30) days of the expiration of Seller's obligation hereunder, Buyer shall return the Performance Security to Seller, less amounts drawn. In the event that the Performance Security is a letter of credit or parent guarantee and the issuer of such letter of credit or guarantee (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit or guarantee and such letter of credit or guarantee expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit or guarantee by such issuer, Seller shall have ten (10) days to post cash or deliver a substitute letter of credit or parent guaranty that meets the requirements set forth in the definition of Performance Security.

ARTICLE 10 NOTICES

10.1 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.

10.2 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 11 FORCE MAJEURE

11.1 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 (unless such inability is due to a change in Law or other 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 Seller’s inability to obtain sufficient labor, equipment, materials, or other resources 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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

11.2 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.

11.3 **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 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.

11.4 **Partial or Full Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that materially and adversely affects the claiming Party from performing its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon thirty (30) days written notice to the other Party. If at the end of such thirty (30) day period after notice, such Force Majeure Event is still in effect, this Agreement will automatically terminate. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(c). Notwithstanding the foregoing, if the Facility is destroyed or rendered inoperable by a Force Majeure Event, and an independent, third party engineer determines in writing that the Facility cannot be repaired or replaced within an aggregate period of twelve (12) months after the first day of such Force Majeure, Seller shall have no obligation to, rebuild the Facility and recommence delivery of Product to Buyer. If Seller (a) notifies Buyer within sixty (60) days of the Force Majeure Event that Seller intends to rebuild the Facility and recommence delivery of Energy to Buyer and (b) makes good faith efforts to order replacement equipment within ninety (90) days of the occurrence of a Force Majeure Event, then, Seller shall have twelve (12) months after the first day of such Force Majeure to reestablish deliveries subject to all terms and conditions of this Agreement will and shall be deemed to be in full force and effect upon the date of commercial operation of the rebuilt Facility.

ARTICLE 12

DEFAULTS; REMEDIES; TERMINATION

12.1 **Seller Defaults.** The occurrence of any of the following events or circumstances shall constitute an "Event of Default" upon its occurrence but shall be subject to cure within the applicable cure periods set forth below after the date of written notice from Buyer to Seller and Lender, if any, as provided for in Section 16.3 (each, a "**Seller Default**"):

(a) Seller fails to pay any amounts due Buyer pursuant to this Agreement and such breach remains uncured for five (5) Business Days following notice of such breach to Seller;

(b) Seller breaches any material term of this Agreement, including any representation or warranty, and (i) Seller has failed to cure the breach within forty-five (45) days of Buyer's notice of such breach, or (ii) if Seller has diligently commenced work to cure such breach during such forty-five (45) day period but additional time is needed to cure the breach, not to exceed a total of ninety (90) days from the date of Buyer's notice, Seller has failed to cure the breach within such ninety (90) day period;

(c) Seller commences a voluntary case under any bankruptcy Law;

(d) a petition is filed against Seller in an involuntary case under any bankruptcy Law, and such petition remains undismissed or undischarged for a period of one-hundred eighty (180) days after the date of the filing of such proceeding or Seller acquiesces;

(e) Seller's actual fraud or willful misconduct in connection with this Agreement;

(f) Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement any Product that was not generated by the Facility;

(g) Seller fails to maintain Development Security or Performance Security as required pursuant to Sections 9.7 and 9.8 within the time period set forth therein;

(h) Seller consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, after taking into effect such consolidation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer;

(i) Either (i) Seller fails to pay any Payment in Lieu of Performance damages in accordance with Exhibit D; or (ii) an Output Event of Default has occurred;

(j) Except as permitted in Article 15, Seller does not own or otherwise have control of the Facility; provided that Seller may exercise control of the Facility pursuant to one or more operations and maintenance, management services, or similar agreements with service providers;

(k) Seller does not have Site Control in accordance with Section 14.1(f) and Seller has not cured such failure within sixty (60) days after the occurrence of the event that results in the failure;

(l) Seller removes from the Facility equipment upon which the Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair or maintenance, and the equipment is not returned within five (5) Business Days after Notice from Buyer;

(m) Except where there has been a change in Law that would affect Seller's status as an Eligible Renewable Energy Resource, and Seller has made commercially reasonable efforts in accordance with Section 3.8 to comply with such change in Law, the Facility fails to qualify as an Eligible Renewable Energy Resource;

(n) Except where there has been a change in Law that would affect the eligibility of electric energy to qualify as renewable energy for the purposes of the California Renewables Portfolio Standard, and Seller has made commercially reasonable efforts in accordance with Section 3.9 to comply with the change in Law, any electric energy from the Facility and sold or to be sold to Buyer hereunder fails to qualify as eligible renewable energy for purposes of the California Renewables Portfolio Standard;

(o) A termination of, or cessation of service under, any agreement necessary for Seller:

- (i) To interconnect the Facility to the Transmission System;
- (ii) To transmit the electric energy on the Transmission System; or
- (ii) To comply with the CAISO Tariff;

provided, however, if a termination of, or cessation of service under any such agreement is not due to the fault of Seller, Seller shall have ninety (90) days from such termination or cessation to cure such failure, so long as Seller is diligently pursuing such a cure;

(p) Subject to Article 3 and Article 4, Seller fails to take any actions necessary to dedicate, convey or effectuate the use of any and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits, if any, for Buyer's sole benefit as specified in Article 3 and Article 4; or

(q) The membership interests in Seller have been transferred, pledged or assigned as collateral or otherwise to any party other than (i) Lender in accordance with Article 16 or (ii) a Qualified Assignee.

12.2 **Buyer Defaults.** The occurrence of any of the following events or circumstances shall constitute an "Event of Default" upon its occurrence but shall be subject to cure within the applicable cure periods set forth below after the date of written notice from Seller to Buyer (each, a "**Buyer Default**"):

(a) Buyer fails to pay any amounts due Seller pursuant to this Agreement and such breach remains uncured for five (5) Business Days following notice of such breach to Buyer;

(b) Buyer breaches any material term of this Agreement, including any representation or warranty, and (i) Buyer has failed to cure the breach within forty-five (45) days after Seller's notice of such breach, or (ii) if Buyer has diligently commenced work to cure such breach during such forty-five (45) day period but additional time is needed to cure the breach,

not to exceed a total of ninety (90) days from the date of Seller's notice, Buyer has failed to cure the breach within such ninety (90) day period;

(c) Buyer commences a voluntary case under any bankruptcy Law;

(d) Buyer fails to maintain its revenue requirements in accordance with Section 9.7;

(e) a petition is filed against Buyer in an involuntary case under any bankruptcy Law, and such petition remains undismissed or undischarged for a period of one hundred eighty (180) days after the date of the filing of such proceeding or Buyer acquiesces; or

(f) Buyer's actual fraud or willful misconduct in connection with this Agreement.

12.3 Buyer's Remedies. Subject to Article 13, upon the occurrence and notice to Seller of a Seller Default, Buyer shall have the right (but not the obligation) to:

(a) suspend performance of its obligations under this Agreement; and/or

(b) receive from Seller direct damages incurred by Buyer in connection with such Seller Default (including during any applicable cure period, whether or not Buyer has elected to suspend performance during such cure period); provided, however that Buyer shall use commercially reasonable efforts to mitigate any damages it may incur as a result of such Seller Default.

12.4 Seller's Remedies. Subject to Article 13, upon the occurrence and notice to Buyer of a Buyer Default, Seller shall have the right (but not the obligation) to:

(a) suspend performance of its obligations under this Agreement;

(b) sell to a third Person, free and clear of any claims by Buyer, all Product for such period during which Seller suspends performance hereunder; and/or

(c) receive from Buyer direct damages incurred by Seller in connection with such Buyer Default (including during any applicable cure period, whether or not Seller has elected to suspend performance during such cure period); provided, however that Seller shall use commercially reasonable efforts to mitigate any damages it may incur as a result of such Buyer Default.

12.5 Termination for an Event of Default.

(a) In addition to those remedies in Sections 12.3 and 12.4, if a Seller Default or a Buyer Default, as applicable, has occurred and remains uncured by the expiration of the applicable cure period, the non-defaulting Party may terminate this Agreement within thirty (30) days after the expiration of such cure period upon notice to the defaulting Party; provided, that if the non-defaulting Party does not terminate this Agreement within such thirty (30) day period,

the Seller Default or Buyer Default, as the case may be, shall be deemed to have been waived by the non-defaulting Party.

(b) As soon as practicable after notice of termination, the non-defaulting Party shall provide notice to the defaulting Party of the Termination Payment. The notice must include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

(c) If the Termination Payment is positive, the defaulting Party shall pay such amount to the non-defaulting Party within ten (10) Business Days after the notice is provided. If the Termination Payment is negative (i.e., the non-defaulting Party owes the defaulting Party more than the defaulting Party owes the non-defaulting Party), then the non-defaulting Party shall pay such amount to the defaulting Party within thirty (30) days after the notice is provided.

(d) The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for dispute resolution as provided in Article 17.

ARTICLE 13 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

13.1 **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, Seller's sole liability for a failure of (i) Seller to construct the Facility, (ii) the Facility to achieve Commercial Operation by the Guaranteed Commercial Operation Date, or (iii) the Facility to achieve Commercial Operation at any specific capacity by the applicable dates set forth in Exhibit B, shall be the payment by Seller of Construction and Capacity Damages as specified in Exhibit B Sections 1, 2, and 5, and termination rights as specified in Exhibit B Section 3.

13.2 **NO CONSEQUENTIAL DAMAGES.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER SELLER, NOR BUYER 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.

13.3 **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, WITHOUT LIMITATION, 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 SECTION 12.5, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT D, 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 14 REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **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.

(f) Seller has Site Control, and hereby covenants that it will maintain Site Control for the Contract Term in a manner that will allow it to perform its obligations hereunder.

(g) OTHER THAN THOSE WARRANTIES AND GUARANTIES EXPRESSLY SET FORTH IN THE TERMS OF THIS AGREEMENT, SELLER MAKES NO WARRANTIES AND GUARANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.

14.2 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 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 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.

14.3 **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 15 ASSIGNMENT

15.1 **General Prohibition on Assignments.** Except as provided below and in Article 16, 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.

15.2 **Permitted Assignment.** 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 16.1, 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, 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 its good faith and sole discretion, does not agree that Seller's assignee has the financial capability to perform all of Seller's obligations under this Agreement, then prior to any such transfer either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide performance security in an amount and form reasonably acceptable to Buyer. Any assignment by Seller, its successors or assigns under this Section 15.2 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Buyer.

15.3 **Change of Control of Buyer.** Subject to the following sentence, 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 16.2(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 its good faith and sole discretion, 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 payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 15.3 shall be of no force and effect unless and until such notice and agreement by the assignee have been received by Seller.

ARTICLE 16

LENDER ACCOMMODATIONS

16.1 **Granting of Lender Interest.** Notwithstanding Section 15.2, 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 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.

16.2 **Rights of Lender.** If Seller grants an interest under this Agreement as permitted by Section 16.1, 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 Section 12.1, 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, 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 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) Buyer 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 Buyer with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; provided that 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.

16.3 **Cure Rights of Lender.** Buyer shall provide notice of the occurrence of any Event of Default described in Section 12.1 or 12.2 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 Seller 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 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 Buyer arising or accruing hereunder.

ARTICLE 17 DISPUTE RESOLUTION

17.1 **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.

17.2 **Dispute Resolution.** The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 17.2. 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 thirty (30) days of initiating such discussions, or within forty (40) days after notice of the dispute, then the Parties shall resolve such controversy through Arbitration. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate. The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in San Francisco, California, and shall be administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994) and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law.

17.3 **Attorneys' Fees.** If Arbitration is pursued for the enforcement of this Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of this Agreement, each Party shall be responsible for its own attorneys' fees and costs.

ARTICLE 18 INDEMNIFICATION

18.1 **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 (and in the case of Seller, its contractors constructing or providing services to the Facility (including suppliers) and its Lenders) (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 18.1 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.

18.2 **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 18 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.

(b) Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 18, 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 19 INSURANCE

19.1 **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 in the aggregate, 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 ten million dollars (\$10,000,000).

(b) *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.

(c) *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 and in the aggregate. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.

(d) *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.

(e) *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 and in the aggregate. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (e)(i) and (e)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 19.1(e).

(f) *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. 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.

ARTICLE 20 CONFIDENTIAL INFORMATION

20.1 **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.

20.2 **Duty to Maintain Confidentiality.** Buyer and Seller agree not to disclose Confidential Information received from the other to anyone (other than Buyer's and Seller's Affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, investors, prospective investors, contractors constructing or providing services to the Facility (including suppliers), employees, officers and directors who agree to be bound by the provisions of this Article), without the deliverer's prior written consent. 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 (including the California Public Records Act), (b) pursuant to applicable regulation or 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. In the event a recipient is required by Law or by a court or regulatory agency to disclose Confidential Information, the recipient shall, to the extent possible, give the disclosing Party prompt notice of such request so that the disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is finally required (after, if advance notice to the disclosing Party is permitted by applicable Law, exhausting any appeal requested by the disclosing Party at the disclosing Party's expense), the receiving Party may disclose such Confidential Information.

20.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 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.

20.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 20, 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 20 to the same extent as if it were a Party.

ARTICLE 21 MISCELLANEOUS

21.1 **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. 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.

21.2 **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.

21.3 **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).

21.4 **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.

21.5 **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).

21.6 **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.

21.7 **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.

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

21.9 **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.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: [REDACTED]

APN: All or a portion of APN [REDACTED]
[REDACTED]

County: [REDACTED]

Guaranteed Capacity: 30 MW, as measured by the sum of the inverter nameplate capacity of the Facility

P-node/Delivery Point: PNode designated by CAISO for the Facility at the 230kV breaker position of the Facility's 230 kV switching station connecting to PG&E's [REDACTED] [REDACTED] Transmission Lines.

Site: All or a portion of that real property located in [REDACTED], California, more particularly described as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Additional Information: The Site is located [Redacted] CA, in PG&E service territory

Map:

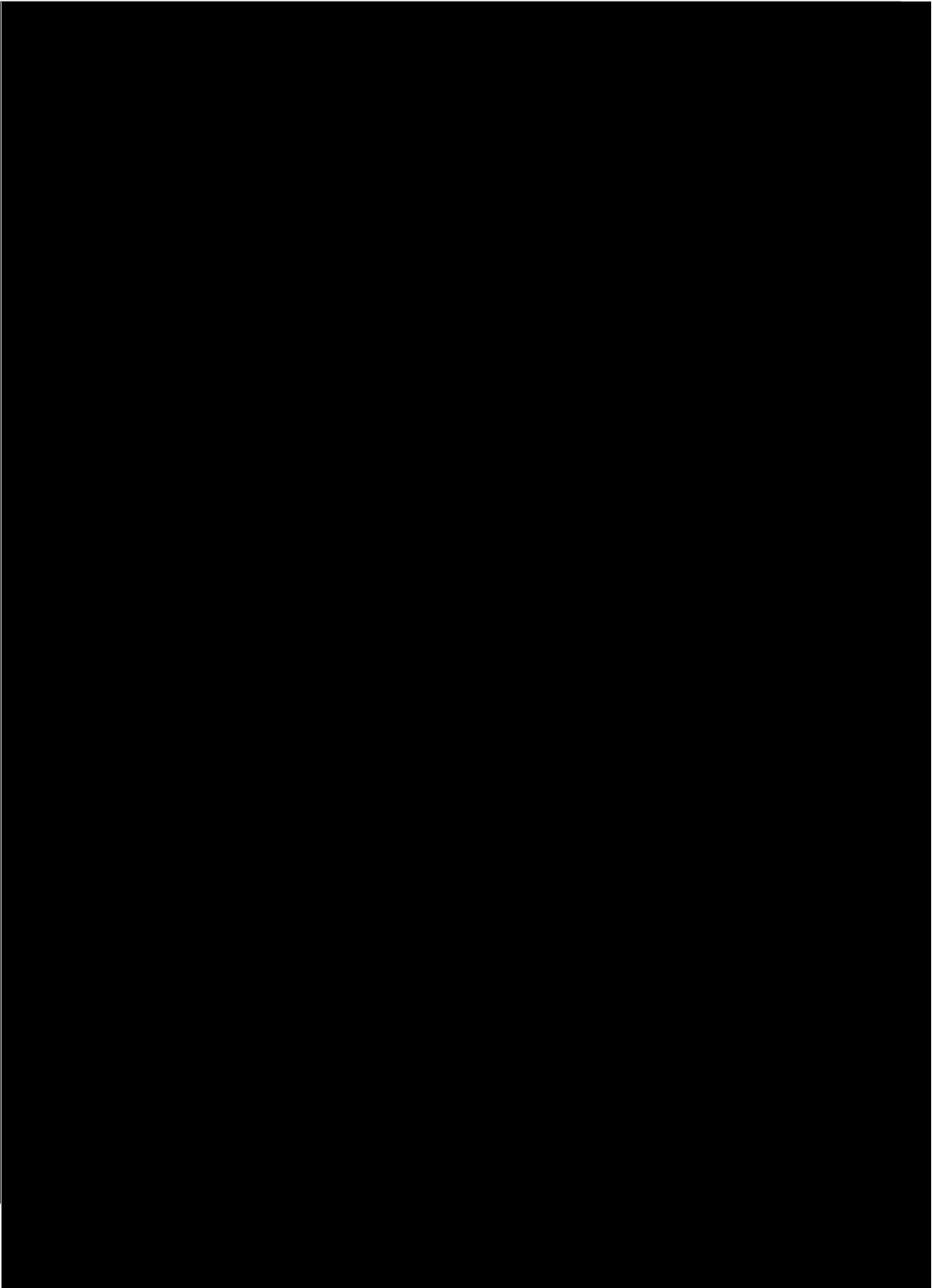


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction of the Facility to begin on or before [REDACTED], 2016 (as may be extended pursuant to this Exhibit B, 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 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 I hereto.
- b. If construction does not begin on the Facility by the Guaranteed Construction Start Date, Seller shall pay “**Construction Delay Damages**” to Buyer on account of such delay. Construction Delay Damages shall be payable in the amount of One Thousand Dollars (\$1,000.00) per day for which construction has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until the earlier of: (a) the beginning of construction for the Facility or (b) termination of this Agreement. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) all necessary permits have been obtained to operate the Facility and to produce, sell and transmit Energy, (ii) ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Energy to Buyer, and (iii) Seller has fulfilled all of the conditions precedent in Section 2.2. The “**Commercial Operation Date**” shall be the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility by December 31, 2016 (as may be extended pursuant to this Exhibit B, the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer not less than twenty (20) Business Days in advance of the Commercial Operation Date and shall update Buyer regarding any changes to the Commercial Operation Date so noticed and shall confirm to Buyer in writing when Commercial Operation has been achieved. Seller shall provide Buyer with an updated Schedule D-1 containing updated Expected Energy values for the Facility within thirty (30) days of the Commercial Operation Date, and such updated Schedule D-1 shall be considered Schedule D-1 for all purposes of this Agreement thenceforth; provided that Expected Energy values shall not be adjusted by more than 5% for any Contract Year.
- b. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay “**Commercial Operation Delay Damages**” to

Buyer on account of such delay in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) per day for each day that Seller has not achieved Commercial Operation past the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the earlier of: (a) the Commercial Operation Date or (b) termination of this Agreement. 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. **Termination for Failure to Commence Construction of the Facility or Achieve Commercial Operation.** If Seller has not caused construction to begin on the Facility within two hundred seventy (270) days after the Guaranteed Construction Start Date, Buyer may elect to terminate this Agreement, which termination shall be effective thirty (30) days after written notice to Seller. If Seller has not caused the Facility to achieve Commercial Operation within two hundred seventy (270) days after the Guaranteed Commercial Operation Date, either Party may elect to terminate this Agreement, which termination shall be effective thirty (30) days after written notice by the terminating Party to the non-terminating Party. Upon termination pursuant to this Exhibit B, neither Party shall have further liability or obligation to the other Party, other than Construction and Capacity Damages accrued prior to the date of notice of termination.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
 - a. Seller is delayed due to the failure by Buyer to perform any covenant or obligation under this Agreement; or
 - b. a Force Majeure Event occurs.
5. **Failure to Reach Guaranteed Capacity.** If, sixty (60) days after 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 until one (1) year after the Commercial Operations Date to install additional capacity 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 One Hundred Thousand Dollars (\$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.
6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Construction and Capacity Damages due hereunder, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
7. **Construction and Capacity Damages As Liquidated Damages and Sole Remedy.** Construction and Capacity Damages shall be payable as liquidated damages and in lieu of actual damages accrued. Buyer’s sole remedy and Seller’s sole liability for the failure of

(i) Seller to construct the Facility, (ii) the Facility to achieve Commercial Operation by the Guaranteed Commercial Operation Date; or (iii) the Facility to achieve Commercial Operation at any specific Capacity shall be the payment by Seller of Construction and Capacity Damages as specified in Section 1, 2, and 5 above, and termination rights as specified in Section 3 above.

EXHIBIT C

EMERGENCY CONTACT INFORMATION

BUYER:

[Buyer to populate]

Fax No.:

Phone No.:

Email:

SELLER:

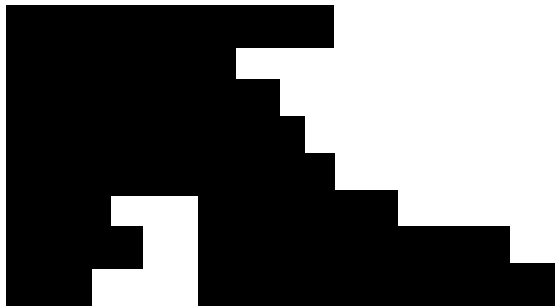


EXHIBIT D

OUTPUT OF THE FACILITY

SECTION 1 – REPLACEMENT PRODUCT; PAYMENTS IN LIEU OF PERFORMANCE

Commencing at the end of the second Contract Year, Buyer shall elect to (i) receive Replacement Product from Seller, (ii) receive payments from Seller in lieu of performance (“**Payments in Lieu of Performance**”), or (iii) receive some combination of Replacement Product and Payments in Lieu of Performance for Shortfall Amounts.

(a) If Buyer elects to receive Replacement Product, such Replacement Product shall be delivered to the Delivery Point or such other point of delivery as is mutually agreed upon by the Parties (which point of delivery shall be deemed the “Delivery Point” for such Replacement Product for purposes of Exhibit D and the other scheduling and delivery provisions hereof) and on a delivery schedule mutually agreed to by Seller and Buyer. Any additional costs or expenses associated with delivery of Replacement Product to a Delivery Point designated under this Exhibit D shall be borne by Seller. To the extent Seller is unable to deliver or provide sufficient Replacement Product, then Seller shall pay Buyer Payments in Lieu of Performance pursuant to Sections 1(b) and 1(c) of this Exhibit D.

(b) Payments in Lieu of Performance shall be calculated pursuant to the following formula at the end of the relevant Calculation Period:

$$(Bp - Cp) * (G - A1 - RPC)$$

where:

Bp = the average price per MWh paid by Buyer to third parties (and negotiated on an arm’s length basis and reflecting a market rate, as reasonably determined by Buyer) during the relevant Calculation Period for equivalent energy and Green Attributes plus any reasonable transactional costs associated with such purchases;

Cp = the Contract Price;

G = the Guaranteed Output for the relevant Calculation Period;

A1 = the actual amount of Energy produced by the Facility and delivered to Buyer during the relevant Calculation Period, as adjusted pursuant to Section 3, below;

RPC = the amount of Replacement Product Seller has committed.

No payment shall be due if the calculation of $(Bp - Cp)$ or $(G - A1 - RPC)$ yields a negative number.

(c) Payments in Lieu of Performance shall be calculated pursuant to the following formula six (6) months after the end of the relevant Calculation Period:

$$(Bp - Cp) * (RPC - RPD)$$

where:

Bp = the average price per MWh paid by Buyer to third parties (and negotiated on an arm's length basis and reflecting a market rate, as reasonably determined by Buyer) during the relevant Calculation Period for equivalent energy and Green Attributes plus any reasonable transactional costs associated with such purchases;

Cp = the Contract Price;

RPC = the amount of Replacement Product Seller has committed;

RPD = the amount of Replacement Product Seller has actually delivered.

No payment shall be due if the calculation of $(Bp - Cp)$ or $(RPC - RPD)$ yields a negative number.

(d) For each Contract Year, Seller shall send Buyer an audit within sixty (60) days of the anniversary of such date summarizing the output of the Facility during the preceding twelve (12) month period. Buyer shall have thirty (30) days following receipt of such audit to dispute the conclusions therein, after which time the audit shall be binding on the Parties. Any payments due to Buyer shall be remitted to Buyer within twenty (20) days of the binding audit.

SECTION 2 – OUTPUT EVENT OF DEFAULT

(a) “**Output Event of Default**” occurs if, for any two (2) consecutive Contract Years, the actual amount of Energy produced by the Facility and delivered to Buyer, as adjusted pursuant to Section 3 below, fails to exceed fifty percent (50%) of the Expected Energy for the relevant period.

SECTION 3 – ADJUSTED ANNUAL PRODUCTION

(a) For purposes of the calculations in Sections 1 and 2 above, the actual amount of Energy produced and delivered by the Facility during the Contract Year shall be increased to account for:

- (i) any period during which a Force Majeure Event has occurred and is continuing;
- (ii) any Curtailment Period;
- (iii) any period during which a Buyer Default has occurred; *and*
- (iv) any Buyer Curtailment Period.

(b) The additional MWh contemplated in paragraph (a) shall be calculated by using the methodology described in the definition of Deemed Energy Generation. In the event that it is not possible to use such methodology, the additional MWh contemplated in paragraph (a) shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to (x) the average production during the month of such non-production in the preceding two (2) Contract Years, if available, divided by the total number of days in all such months; (y) if in the second Contract Year, the average production during the month of such non-production in the preceding Contract Year, divided by the total number of days in such month; or (z) if in the first Contract Year, the average production during the previous month, divided by the total number of days in such month with respect to (i) (ii) and (iv) above and subject to adjustment with respect to (iii) above.

SECTION 4 – SOLE AND EXCLUSIVE REMEDIES

(a) The Payments in Lieu of Performance shall be payable as liquidated damages and in lieu of actual damages. The Parties agree that the extent and amount of actual damages that would be suffered by Buyer as a result of Seller's failure to achieve the performance standards set forth in this Exhibit D is impractical and extremely difficult to determine or estimate. Therefore, Payments in Lieu of Performance set forth in this Exhibit D represent the Parties' best estimate of the sums that would be fair, average compensation for all losses that may be sustained as a consequence of the Facility's failure to achieve performance standards set forth in this Exhibit D.

(b) Notwithstanding anything to the contrary herein, Buyer and Seller agree that where there are any Shortfall Amounts, Buyer's sole and exclusive damage remedies shall be (i) the payment of liquidated damages provided for in Section 2 of this Exhibit D, (ii) the delivery of Replacement Product or (iii) some combination of (i) and (ii).

SCHEDULE D-1
EXPECTED ENERGY

Contract Year	Expected Energy (MWh)
1	84,126
2	83,705
3	83,287
4	82,870
5	82,456
6	82,044
7	81,634
8	81,225
9	80,819
10	80,415
11	80,013
12	79,613
13	79,215
14	78,819
15	78,425
16	78,033
17	77,643
18	77,254
19	76,868
20	76,484

Exhibit D

Schedule 1

EXHIBIT E
MILESTONES

Milestone	Date for Completion
<i>Completion of [REDACTED] Switching Station</i>	<i>December 31, 2015</i>
<i>Complete CEQA Mitigation Measures</i>	<i>March 31, 2016</i>
<i>Complete Agricultural Management Plan</i>	<i>March 31, 2016</i>
<i>Close of Construction Financing, if applicable</i>	<i>March 31, 2016</i>
<i>Receive Construction Permits</i>	<i>March 31, 2016</i>
<i>Guaranteed Construction Start Date</i>	<i>March 31, 2016</i>
<i>CEC Precertification</i>	<i>June 30, 2016</i>
<i>Completion of Interconnection Facilities</i>	<i>December 15, 2016</i>
<i>Guaranteed Commercial Operation Date</i>	<i>December 31, 2016</i>

EXHIBIT F

QUARTERLY MILESTONE PROGRESS REPORTING FORM

Prior to Commercial Operation, Seller shall prepare a written report (this “Quarterly Milestone Progress Reporting Form”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing and start-up of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone 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. Bar chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter.
8. Forecast of activities scheduled for the current calendar quarter.
7. Written description about the progress relative to Seller’s Milestones.
8. List of issues that could potentially impact Seller’s Milestones.
9. 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.
10. 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.
11. 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.

EXHIBIT G
INTEGRATION COST CHARGE CODE

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of the Commercial Operation is delivered by [independent engineer] (“**Engineer**”) to SONOMA CLEAN POWER AUTHORITY (“**Buyer**”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“**Agreement**”) by and between [REDACTED] 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.

1. Seller has successfully completed an initial Facility performance test under Seller’s EPC contract for the Facility which demonstrates peak Facility electrical output of no less than ninety percent (90%) of the Guaranteed Capacity (as adjusted for ambient conditions on the date of the performance test), and Seller has delivered to Buyer a certification of a licensed professional engineer certifying that Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity and that such equipment is capable of generating energy in accordance with the manufacturer’s specifications (“**Initial Mechanical Completion**”);
2. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
3. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Energy;
4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
5. The Facility is operational and interconnected with the CAISO grid, has been approved by CAISO to commence operations, and is capable of delivering Energy through the permanent interconnection facilities for the Facility.

For purposes of Section 4 above, “**Initial Commissioning Completion**” means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer’s specifications.

EXECUTED by [INDEPENDENT ENGINEER]

this _____ day of _____, 20__.

[INDEPENDENT ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification (“*Certification*”) of the Construction Start Date is delivered by [REDACTED] (“*Seller*”) to the SONOMA CLEAN POWER AUTHORITY (“*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 Notice to Proceed with the construction of the Facility was issued on _____ (attached);
3. the Construction Start 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 _____.

[REDACTED]

By: _____
Its: _____

Date: _____

SCHEDULE 3.2

SAMPLE CALCULATION OF CONTRACT PRICE

SCHEDULE 3.6

SAMPLE CALCULATION OF RA DEFICIENCY AMOUNT

Example, for illustrative purposes only:

If:

- Commercial Operation Date = December 31, 2016
- Date Full Capacity Deliverability Status is achieved = June 30, 2017
- Net Qualifying Capacity, June 2017 = 13.01 MW
- Qualifying Capacity, June 2017 = 26.02 MW (from the CAISO NQC Solar Factors for June 2014 as shown below.)
- RA Value = [REDACTED] per MW of Contract Capacity per month
- Guaranteed Capacity = 30 MW
- Solar NQC Factor = Monthly NQC as provided by CAISO. The 2014 solar factors are:

Solar					NQC MW
Month	2010	2011	2012	CY 2014 Solar Factor	30.00
1	0.0039	0.0090	0.0125	0.84%	0.25
2	0.0472	0.0873	0.1049	7.98%	2.39
3	0.1558	0.1766	0.2260	18.61%	5.58
4	0.5086	0.5821	0.7149	60.19%	18.06
5	0.7666	0.5991	0.8378	73.45%	22.03
6	0.8610	0.8753	0.8657	86.74%	26.02
7	0.7931	0.8731	0.8781	84.81%	25.44
8	0.8014	0.8567	0.7853	81.45%	24.43
9	0.6806	0.7396	0.8034	74.12%	22.24
10	0.4132	0.5596	0.4322	46.83%	14.05
11	0.1211	0.0723	0.0009	6.48%	1.94
12	0.0427	0.0357	0.0030	2.71%	0.81

Then:

- Partial RA Factor = 13.01 MW / 26.02 MW = 0.5
- RA Shortfall Period is January 1, 2017 through August 31, 2017
- RA Shortfall Months are January 2017 through August 2017

And:

- RA Deficiency Amount for June 2017 =
- [REDACTED] / MW / month * 30 MW * 86.74% * (1.0 - 0.5) = \$ [REDACTED]
- RA Deficiency Amount for January 2017 (for a Net Qualifying Capacity of 0 MW) =
- \$ [REDACTED] / MW / month * 30 MW * 0.84% * (1.0 - 0) = \$ [REDACTED]