



**AGENDA**  
**SONOMA CLEAN POWER AUTHORITY**  
**BUSINESS OPERATIONS COMMITTEE**  
**Thursday, April 21, 2016**  
**9:00 A.M.**

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Sonoma Clean Power Authority  
50 Santa Rosa Avenue, 5<sup>th</sup> Floor  
Santa Rosa, California

**I. CALL TO ORDER**

**II. BUSINESS OPERATIONS COMMITTEE REGULAR CALENDAR**

1. Approve the February 3, 2016 meeting minutes of the Sonoma Clean Power Business Operations Committee.
2. Receive report on operations and financial performance. Discuss programs and regulatory issues, and provide direction as appropriate.
3. Receive Power ad hoc Committee report on power purchase agreement and make a recommendation to the Board of Directors (action).

**III. COMMITTEE MEMBER ANNOUNCEMENTS**

**IV. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA**

(Comments are restricted to matters within the Committee jurisdiction. The Committee will hear public comments at this time for up to thirty minutes. Please be brief and limit your comments to three minutes.)

**V. ADJOURN**

**DISABLED ACCOMMODATION:** If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact the Clerk at (707) 978-3463, as soon as possible to ensure arrangements for accommodation.

## COMMONLY USED ACRONYMS/TERMS TO KNOW

<b>BOC</b>	Business Operations Committee
<b>CAISO</b>	California Independent Systems Operator
<b>CAM</b>	Cost Allocation Mechanism
<b>CCA</b>	Community Choice Aggregation.
<b>CEC</b>	California Energy Commission
<b>CleanStart</b>	SCP's basic service
<b>CPUC</b>	California Public Utility Commission
<b>ERRA</b>	Energy Resource Recovery Account
<b>EverGreen</b>	SCP's 100% renewable, 100% local energy product
<b>Geothermal</b>	A locally-available, low-carbon baseload renewable resource
<b>GHG</b>	Greenhouse gas
<b>IOU</b>	Investor Owned Utility (e.g., PG&E)
<b>JPA</b>	Joint Powers Authority
<b>MW</b>	Megawatt (Power = how fast energy is being used at one moment)
<b>MWh</b>	Megawatt-hour (Energy = how much energy is used over time)
<b>NEMA</b>	Net Energy Metering Aggregation (referred to as NetGreen Aggregation for SCP customers) allows customers to share electricity production from one generation system across multiple meters and properties.
<b>NEMV</b>	Virtual Net Energy Metering (referred to as Virtual NetGreen for SCP customers) is allows customers to generate and share electricity production between multiple customers on the same property.
<b>NetGreen</b>	A program offered by SCP which gives its customers financial credit for generating electricity.
<b>PCIA</b>	Power Charge Indifference Adjustment ( <i>This fee is intended to ensure that customers who switch to SCP pay for certain costs related to energy commitments made by PG&amp;E prior to their switch.</i> )
<b>ProFIT</b>	SCP's "Feed in Tariff" program for larger local renewable energy producers
<b>PV</b>	Photovoltaics for making electric energy from sunlight
<b>REC</b>	Renewable Energy Credit – used to track all renewable energy for compliance in California, but also colloquially used to refer to a specific subset of REC called an "unbundled REC" where the environmental attributes of renewable energy are sold separately from the energy.
<b>RAC</b>	Ratepayer Advisory Committee
<b>SCP</b>	Sonoma Clean Power
<b>SCWA</b>	Sonoma County Water Agency
<b>TOU</b>	Time of Use, used to refer to rates that differ by time of day

SONOMA CLEAN POWER AUTHORITY  
BUSINESS OPERATIONS COMMITTEE  
MEETING MINUTES  
FEBRUARY 3, 2016

**I. CALL TO ORDER:**

Meeting called to order by BOC Chair Dowd at 9:03 A.M.  
Committee members present: Dick Dowd, Ken Wells, George Beeler.

Staff Present: CEO Geof Syphers, General Counsel Steve Shupe, Programs Analyst Amy Rider, Internal Operations Manager Stephanie Reynolds

Chair Dowd acknowledged CM Beeler's email comments distributed at the meeting.

**II. BUSINESS OPERATIONS COMMITTEE REGULAR CALENDAR:**

**1. Approve the December 16, 2015 meeting minutes of the Sonoma Clean Power Business Operations Committee**

Motion to approve minutes by CM Wells  
Seconded by CM Beeler  
Motion approved 3-0-0

**2. Receive update on Programs planning and provide direction as appropriate**

CEO Syphers provided an update on CCA activity in California. CleanPowerSF planning service to start in 4 months, Humboldt County had four responses to a request for proposal (RFP) issued in December, Lake County released a RFP recently, San Mateo and San Jose moving forward with their CCA programs. A meeting was held at SCP offices, organized by the CPUC. Representatives present from PG&E, Lancaster, CleanPowerSF, and MCE. The group plans to meet three times per year to discuss community choice program issues.

Programs Analyst Amy Rider spoke about the context for programs in general and SCP's approach to date and approach going forward. She gave an overview of why programs are important to SCP, including meeting JPA goals, continuation of building customer trust, providing benefits back to the community and providing the benefits of a CCA program to Sonoma County.

SCP not attempting to duplicate PG&E programs. One example is the NetGreen program, which has been popular, simple to administer and not cumbersome to customers. The program has been self-funded by SCP, which allows for control and flexibility in administration of the program.



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**The ProFit program** - 3MW of new solar construction in Sonoma County under contract. Funds still available for more applications and the program may be modified to reflect the growing value of storage and smart inverters.

**Energize program** - Still in beta testing with closing comments due in the next week.

**Agricultural Floating Solar** – A request for proposal (RFP) was issued for customer sites that expressed interest in floating solar on their irrigation ponds.

**Switch Vehicles Lab** – SCP is filming a documentary on the entire process from teacher training to final product.

**Electric Vehicle (EV) programs** - Current activities related to work on market assessment and survey tools to see how Sonoma County residents would respond and what their needs are.

**Future of EVs** – Concept of Drive EverGreen is to add an additional ten-thousand EVs to Sonoma County's roads in less than five years. CEO Syphers spoke about a partnership with Sonoma County Transportation Authority, Sonoma County Water Agency, Regional Climate Protection Authority, California ISO and Lawrence Livermore National Laboratory. At a basic level, the program would incentivize the shift to EVs without causing grid problems. But additional features would allow significant demand response control to support more renewable energy. Getting people into an EV with a positive experience would be key, so word of mouth going forward would be positive.

*Chair Dowd organized questions/comments by program topic.*

CEO Syphers asked for feedback at the end of the discussion on the budgetary concept to feed into the ratepayer process. General support for \$6 million in program budget, but no action taken.

**Energize** –

-CM Wells stated the product would be ideal for young/high school students to work on as a team project.

-CM Beeler, would like product to evolve to show customers not only when good to cut back, but when it's to utilize excess energy for charging EVs, etc.

-Chair Dowd read CM Brophy's comments, sent via email and presented at the meeting. If users tend not to use a smart phone, they may miss a lot of the clean power hours. A better activation method would be beneficial. CM Brophy also indicated that the time of use importance is unclear. Amy Rider



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noted that more warning time in advance of a conservation alert is not possible at this time because market rules are designed to prevent gaming.

-Chair Dowd is enjoying the beta testing and working with his family on adjusting use based on the notices received.

Public Comment: None

**NetGreen -**

CM Beeler - Appreciates program, asked if VNEM is allowed. Amy Rider responded that VNEM changes were discontinued by CPUC ruling. The closest thing to community solar is EverGreen and the Feed-in-Tariff program.

-CM Brophy's comments, as read by Chair Dowd – Budgetary concerns expressed such as watching for a negative impact on finances. CEO Syphers stated that with better forecasting and a financial history, the budgets will be more accurate in the future. Chair Dowd noted the importance of getting that information out to the public via committee meetings.

Public Comment:

June Brashares – Asked about school and bill credit transfers and why the City of Lancaster is doing things differently than Sonoma Clean Power. CEO Syphers stated the need for follow up. She also asked about the electrification of buses and what research has been done on the subject in Sonoma County. CEO Syphers stated that SCP has been meeting with fleet managers and talking about school buses, city buses, and fleet vehicles.

**Carbon Reducing Education –**

CM Wells – Discussed budget items and funding. CEO Syphers stated current year programs are funded and any additional funding would be presented to the Business Operations Committee for approval. The most valuable input needed by staff is how much funding should be reserved for programs in the next fiscal year.

CM Beeler – Working with Petaluma school district to influence Maker Spaces and help them have more carbon-reducing projects.

CM Brophy, as read by Chair Dowd – Important to work on all forms of renewable energy, especially geothermal because of the geographical closeness.

Chair Dowd - Supports programs because of the effectiveness of working through younger generations to build awareness of reducing GHGs.

Public Comment: None



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### **Agricultural Floating Solar-**

CM Wells – Looking forward to responses to RFPs. Appreciates facilitation by SCP to agricultural community.

CM Beeler – Current program focuses on mainly wine industry sites and he would like expansion to methane, possibly dairies, or broaden program to other areas of agriculture. CEO Syphers noted a company working to do a project using the entire County's green waste for bio methane energy.

Chair Dowd – Need to continue focus on putting renewable energy developments on previously impacted properties.

### **Public Comment:**

Bob Williamson – Asked for clarification on SCP financial impact outside of administrative assistance. Amy Rider responded that if sites go online, they would be NetGreen projects and not designed for excess generation.

Mary Fricker – Asked for the name of the company working on the methane project. ReBio.

Peter Renfro – Asked about original funding of the program. CEO Syphers responded that the Water Agency was paid for staff on a contract basis, no investment in infrastructure.

### **ProFIT-**

CM Brophy, via Chair Dowd - Asked for continual updates on status of developments.

Chair Dowd - Recognizes rules and regulations are in place, but need to be worked on, example of Wells Fargo center only using part of the parking lot for solar instead of the entire lot. Discussion on why shopping malls do not use solar, as signs are blocked from view.

### **Public Comment:**

Geoffrey Smith – The issue of parking lot solar is being worked on and he would like to work with community for signage improvements and ordinances.

### **EV Market Assessment Customer tools and education-**

CM Wells – Asked about survey details. Amy Rider stated a consultant, ICF International will be doing a county-wide market assessment to learn more about travel patterns, vehicle behaviors. The survey will be a random sampling of approximate 500 people and will be initiated over the next 4-6 months.

CM Beeler - Excited about EV work. He would like analysis of per person, per dollar, CO2 saved per mile. Moderate to low income people need to be included in survey/assessment.

CM Brophy via Chair Dowd – Suggests looking into to a wider part of the community so others can look at EV ownership.



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Chair Dowd – Suggested getting information out in a practical way, let others see and drive EVs. Also that specific costs need to be included when representing to RAC for more clarity.

Public Comment: None

**EV Integration Effort:**

CM Wells – Appreciates the risk and hopes the market assessment will feed directly into this project. Focus should be on getting people to test drive the vehicles. Suggests working with County paratransit program.

CM Beeler – Expects staff to return to BOC with specifics on funding. Hopes all emphasis does not take SCP's focus away from other technologies that can help reduce GHGs such as household usage, water heaters, etc.

CM Brophy via Chair Dowd - Concerned with funds and management of programs, need to remain transparent.

Chair Dowd - Suggests program can be designed to engage Evergreen customers when helping fund EV charging stations.

Public Comment:

Bob Williamson - Would like to see where the funds would go, specifically, and have hardware, vehicles, etc. identified in budget. It would be helpful to put into a context of CO2 saved per dollar spent. CEO Syphers responded that more detail will be brought to the committee. The reason to budget funds now is this is a way to put forward a good plan and a rate-setting process.

Important to note that there has not been any program that will be a multi-year commitment.

*Chair Dowd returned for summary comments*

CM Wells commented on the challenge based on economics. Dairies with methane and waste ponds do not have the economics to change processes. If SCP wants to support dairy, a special category may need to be made.

CM Beeler - Appreciates dollar per CO2 saved ideas as a comparison

Chair Dowd – Appreciated the discussion as a valuable tool. Concerned that public needs to understand constant evaluations of programs and concepts are being done.

Public Comment:

June Brashares – Asked about rate decrease, if it was to offset PCIA charges. How will that relate to PGE rates? CEO Syphers stated the average customer rates in January are saving only approximately 1% on bills compared to PG&E. SCP's rate setting definitely factors in the PCIA charges, as well as putting money into programs and reserves.



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Geoffrey Smith – Encourages marketing and promoting EVs by using the current owners as advocates.

**III. COMMITTEE MEMBER ANNOUNCEMENTS**

None

**IV. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA**

None

**V. ADJOURNMENT**

Meeting adjourned by Chair Dowd at 10:50 A.M.

Respectfully submitted,

Stephanie Reynolds,  
Internal Operations Manager

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## Staff Update – Item 2

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To: Sonoma Clean Power Business Operations Committee

From: Geof Syphers, CEO  
Stephanie Reynolds, Internal Operations Manager

Issue: Operations Report

Date: April 21, 2016

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### NEWS & MILESTONES

SCP's new 70 MW Mustang solar facility in Lemoore, California (Kings County) starts producing power in April

SCP's regulatory work on PG&E "exit" fees imposed on SCP customers (PCIA) is starting to produce results: The CPUC held a workshop on PCIA issues, and encouraged PG&E to provide better data

SCP has hired an Energy Analyst and Director of Programs

### Mustang Solar Project Turns On Ahead of Schedule

The planned start date for SCP's 70 MW new solar facility is about eight months ahead of the original planned start date. For the first year, SCP will receive the entire 100 MW output of the single-axis tracking solar array, and then 70 MW for the remainder of the power purchase agreement.

This facility represents an increase of about 90% in Sonoma County's use of solar power. The county's existing solar energy is mainly provided by customer-owned systems on rooftops and parking lots—an important component in California's effort to increase the use of distributed renewable energy.

The Mustang solar facility was developed by Recurrent Energy and constructed under a project labor agreement with IBEW Local 100. It was selected by SCP because of the favorable price, the avoidance of land containing prime soils, and the ability to complete the project quickly.



Photos of this important project will be shared over the coming months, as soon as clear skies provide an opportunity.

### **Progress on Customer Fees**

The Power Charge Indifference Adjustment (PCIA) fee charged to SCP customers by PG&E has generated concern and attention recently due to a major increase on January 1, 2016 after many years of almost no change. SCP and the other operating community choice programs have been working at the CPUC to increase the ability to audit how the fee is calculated and to evaluate whether there were errors in its implementation.

One advance was made toward SCP's goals, following a CPUC workshop on the matter March 8, 2016. Commissioner Florio directed PG&E to discuss SCP's recommendation for improved access to PCIA data so that SCP and other programs can make a long-term forecast of the fee.

While these are minor advances, even the ability to correct obvious errors in implementing the PCIA will be of value to SCP's customers. Much more work is needed to ensure that cost shifting from PG&E's bundled customers onto SCP's customers is not occurring.

### **Staff Additions**

During the month of April, SCP will be adding two new employees to its valuable team. On April 4th, Carlos Gomes started as our Energy Analyst, focusing on energy forecasting, compliance data preparation, invoice validation and related work. Carlos comes from Vancouver, B.C., where he worked as an economic power market analyst for Powerex. He will be assisting our Procurement and Programs teams.

SCP has also hired a Director of Programs, Jan McFarland. Jan comes to SCP with expertise in renewable energy, program funding and California energy policy. She has served as Special Advisor to CEC Commissioner Geesman, Executive Director of CalSEIA, Senior Advisor at the US EPA, consultant to numerous energy companies, and Executive Director of the California Alternative Energy and Advanced Transportation Finance Authority.



## **PROGRAMS UPDATE**

### NetGreen

Customers whose bills show an SCP generation credit of more than \$100 this month will be receiving checks for those excess credits in May under the NetGreen program. Accounts receiving this “cash out” will have their credits reset to \$0. Those who have less than \$100 are not reset and will continue to accrue credits for excess generation. With all the cities now enrolled and the continued growth of solar, staff anticipates this year’s cash out to be approximately \$600,000, although it is important to note that most of this expense is offset by income from the sale of this energy to other customers.

### Energize

Energize is a web-based, customer engagement tool which asks participants to conserve energy in response to text message and email requests. Those who respond can earn points which can be redeemed for cash or donated to local organizations. The period for beta testing has now closed and the resulting operational corrections are nearly complete. Based on results from beta testing, the first phase of program launch will focus on schools, with a broader outreach to come after SCP gains further experience with this user base.

As such, the next step is to identify 2-3 local schools who can provide direct program marketing to their constituents in exchange for becoming a donation recipient of the program. This focus also will allow staff to more precisely compare a variety of marketing approaches which will improve general audience messaging for a future, more general program campaign.

### SWITCH Electric Vehicle Grant

Electric vehicle classes are well underway at the four (4) local junior high and high schools who were awarded SWITCH electric vehicle grants last year. Because the students build and dismantle the vehicles during the course of their classes, a short film about the program and its recipients is being filmed throughout this semester to document the process, showcase the educational opportunity and help generate additional interest in the grant program for other schools. The film is anticipated to be complete by late summer.



### Electric Vehicle Survey

SCP hired ICF International to conduct some background research into educational gaps and opportunities surrounding electric vehicles in Sonoma County. Staff hopes to use the results of this survey to inform its educational and outreach efforts as well as future program design related to electric vehicles. A questionnaire has been developed to learn the level of interest, existing knowledge and potential barriers of electric vehicles for the general public. This questionnaire will be distributed to a randomly selected group of 1,600 households countywide by mail over the next several months in both English and Spanish.

### Electric Vehicle Education

ICF International is also working to develop a consumer-facing electric vehicle “How To” guidebook. The Guidebook is intended to be for customers to raise awareness about electric vehicles and simplify some of the elements about electric cars that might seem daunting at first: public charging, installing a charger at your home, how electric cars can impact your electricity bill, etc. This effort has just begun and will be further informed by the survey results, specifically with respect to concerns and misconceptions people may have about electric cars.

## **MONTHLY COMPILED FINANCIAL STATEMENTS**

Sonoma Clean Power continued its winter rate season in February, a period where aggregate rates are lower than in the summer season. SCP plans for lower revenues each month during this season, and the actual result for February was a small decrease in net position. The year-to-date growth in net position remains above projections, and is expected to increase when the summer rate season kicks in during the final months of the fiscal year. Year-to-date revenue from electricity sales reached \$111,799,000, with the full Phase 3 rollout in effect. SCP’s winter rate season extends through the end of April 2016.

Electricity sales (as reported on the Statement of Revenues, Expenses and Changes in Net Assets) is being offset by our estimate of uncollectible accounts, which is currently set at 0.5% of electricity sales. As historical data is gathered on the collection patterns specific to SCP customers, this rate will be revisited and adjusted as necessary. Note that the accounts receivable line on the Statement of Net Position is also decreased by this allowance for uncollectibles.



SCP continues to procure electricity from multiple sources. The total cost for the year is slightly below projections. This is primarily due to the lower than expected cost of energy. The effect of this is seen by an excess of electricity sales over cost of electricity of \$27,340,000 for the year-to-date. You will notice a total net position of positive \$35,481,000, which indicates healthy growth as SCP continues to make progress towards its reserve goals. Of this net position, approximately \$6,273,000 and \$1,107,000 is considered set aside for operating and project reserves, respectively.

Overall, other operating expenses continued near or slightly below planned levels for the year.

### **BUDGETARY COMPARISON SCHEDULE**

The accompanying budgetary comparison includes the 2015/16 budget approved by the Board of Directors in June 2015 and the budget adjustment made in the February 2016 board meeting.

The budget is formatted to make comparisons for both the annual and the year-to-date perspective. The first column, 2015/16 YTD Budget, allocates the Board approved annual budget at expected levels throughout the year with considerations for the timing of additional customers, usage volumes, staffing needs, etc. This column represents our best estimates and this granular approach was not part of the Board-approved budget.

Revenue from electricity sales is slightly above budget. This variance may be partially explained by greater volume usage by certain customer types than planned, combined with the effect of low Phase 3 opt-out rates.

The cost of electricity is around 96% of amended budget-to-date. Some of this variance is caused by the fluctuating market cost of energy on open position purchases.

Major operating categories of Data Management and PG&E Service fees costs are closely aligned to the annual budgeted amount. These costs are tied to the customer account total, which increased with the implementation of Phase 3. Due to lower than expected customer opt-outs, we anticipate a need to increase these budget categories to account for costs related to these additional customers before the year is complete.

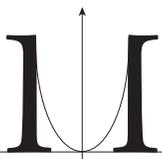


Other than the items mentioned above, SCP continues its trend of remaining near or under budget for most of its operating expenses.

**FUTURE MEETINGS:**

May 5, 2016, 8:45 A.M. – **Board of Directors Meeting**

June 2, 2016, 8:45 A.M. – **Board of Directors Meeting**



## ACCOUNTANTS' COMPILATION REPORT

Board of Directors  
Sonoma Clean Power

Management is responsible for the accompanying special purpose statement of Sonoma Clean Power (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended February 29, 2016, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SCP.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA  
March 30, 2016

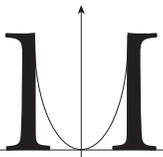


**SONOMA CLEAN POWER AUTHORITY  
OPERATING FUND  
BUDGETARY COMPARISON SCHEDULE  
July 1, 2015 through February 29, 2016**

	<b>2015/16 YTD Budget (amended)</b>	<b>2015/16 YTD Actual</b>	<b>2015/16 YTD Budget Variance (Under) Over</b>	<b>2015/16 YTD Actual/Budget %</b>	<b>2015/16 Annual Budget (amended)</b>	<b>2015/16 Budget Remaining</b>
<b>REVENUE AND OTHER SOURCES:</b>						
Revenue - Electricity (net of allowance)	\$ 111,073,063	\$ 111,608,534	\$ 535,471	100%	\$ 164,824,000	\$ 53,215,466
Revenue - Evergreen Premium (net of allowance)	452,179	189,243	(262,936)	42%	671,000	481,757
Revenue - Interest income	-	995	995	-	-	-
Total revenue and other sources	<u>111,525,242</u>	<u>111,798,772</u>	<u>273,530</u>	<u>100%</u>	<u>165,495,000</u>	<u>53,697,223</u>
<b>EXPENDITURES AND OTHER USES:</b>						
<b>CURRENT EXPENDITURES</b>						
Cost of energy and scheduling	88,143,967	84,458,348	(3,685,619)	96%	130,110,000	45,651,652
Data management	2,167,545	2,187,843	20,298	101%	3,208,000	1,020,157
Service fees- PG&E	694,000	692,856	(1,144)	100%	1,041,000	348,144
Personnel	1,159,000	982,432	(176,568)	85%	1,883,000	900,568
Outreach and communications	521,333	399,811	(121,522)	77%	782,000	382,189
Required noticing	284,444	172,202	(112,242)	61%	352,000	179,798
Legal	446,667	345,733	(100,934)	77%	520,000	174,267
Accounting and auditing	110,000	94,000	(16,000)	85%	165,000	71,000
Technical consultants	370,000	62,716	(307,284)	17%	630,000	567,284
Legislative consultants	156,667	56,000	(100,667)	36%	235,000	179,000
Other consultants	106,667	98,930	(7,737)	93%	160,000	61,070
Program development	893,182	167,794	(725,388)	19%	1,350,000	1,182,206
General and administration	325,333	199,972	(125,361)	61%	488,000	288,028
Total current expenditures	<u>95,378,805</u>	<u>89,918,637</u>	<u>(5,460,168)</u>	<u>94%</u>	<u>140,924,000</u>	<u>51,005,363</u>
<b>OTHER USES</b>						
Collateral deposit payments	4,666,667	560,000	(4,106,667)	12%	7,000,000	6,440,000
Capital outlay	210,000	53,185	(156,815)	25%	282,000	228,815
<b>DEBT SERVICE</b>	<b>254,667</b>	<b>199,466</b>	<b>(55,201)</b>	<b>78%</b>	<b>382,000</b>	<b>182,534</b>
Total expenditures, Other Uses and Debt Service	<u>100,510,139</u>	<u>90,731,288</u>	<u>(9,778,851)</u>	<u>90%</u>	<u>148,588,000</u>	<u>57,856,712</u>
Net increase (decrease) in available fund balance	<u>\$ 11,015,103</u>	<u>\$ 21,067,484</u>	<u>\$ 10,052,381</u>	<u>191%</u>	<u>\$ 16,907,000</u>	<u>\$ (4,159,489)</u>

**SONOMA CLEAN POWER AUTHORITY**  
**OPERATING FUND**  
**BUDGET RECONCILIATION TO STATEMENT OF**  
**REVENUES, EXPENSES AND CHANGES IN NET POSITION**  
**July 1, 2015 through February 29, 2016**

Total revenues and other sources over (under) total expenditures, debt service and other uses per budgetary comparison schedule:	\$ 21,067,484
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position:	
Subtract depreciation expense	(25,129)
Add back capital asset acquisitions	53,185
Add back principal payments on debt	168,571
Add back collateral deposits	<u>560,000</u>
Change in net position	<u><u>\$ 21,824,111</u></u>



## ACCOUNTANTS' COMPILATION REPORT

Management  
Sonoma Clean Power

Management is responsible for the accompanying financial statements of Sonoma Clean Power (a California Joint Powers Authority) which comprise the statement of net position as of February 29, 2016, and the related statement of revenues, expenses, and changes in net position, and the statement cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA  
March 30, 2016



# SONOMA CLEAN POWER AUTHORITY

## STATEMENT OF NET POSITION

As of February 29, 2016

### ASSETS

Current assets	
Cash and cash equivalents	\$ 28,795,394
Accounts receivable, net of allowance	13,936,106
Accrued revenue	6,915,686
Prepaid expenses	15,499
Short-term investments	7,000,000
Total current assets	<u>56,662,685</u>
Noncurrent assets	
Capital assets, net of depreciation	199,097
Deposits	837,366
Total noncurrent assets	<u>1,036,463</u>
Total assets	<u>57,699,148</u>

### LIABILITIES

Current liabilities	
Accounts payable	549,599
Accrued cost of electricity	19,627,397
Other accrued liabilities	160,621
User taxes and energy surcharges due to other governments	408,316
Loan payable to Sonoma County Water Agency	259,295
Total current liabilities	<u>21,005,228</u>
Noncurrent liabilities	
Loan payable to Sonoma County Water Agency	<u>1,212,794</u>
Total liabilities	<u>22,218,022</u>

### NET POSITION

Net investment in capital assets	199,097
Unrestricted	<u>35,282,029</u>
Total net position	<u>\$ 35,481,126</u>

**SONOMA CLEAN POWER AUTHORITY**  
**STATEMENT OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**July 1, 2015 through February 29, 2016**

**OPERATING REVENUES**

Electricity sales, net	\$ 111,608,534
Evergreen electricity premium	189,243
Total operating revenues	<u>111,797,777</u>

**OPERATING EXPENSES**

Cost of electricity	84,458,348
Staff compensation	982,432
Data manager	2,187,843
Service fees - PG&E	692,856
Consultants	479,156
Legal	345,733
Communications	572,013
General and administration	225,385
Total operating expenses	<u>89,943,766</u>
Operating income	<u>21,854,011</u>

**NONOPERATING REVENUES (EXPENSES)**

Interest income	995
Interest expense	(30,895)
Total nonoperating revenues (expenses)	<u>(29,900)</u>

**CHANGE IN NET POSITION**

Net position at beginning of period	21,824,111
Net position at end of period	<u>13,657,015</u>
	<u>\$ 35,481,126</u>

# SONOMA CLEAN POWER AUTHORITY

## STATEMENT OF CASH FLOWS July 1, 2015 through February 29, 2016

### CASH FLOWS FROM OPERATING ACTIVITIES

Cash receipts from customers	\$ 111,363,709
Return of supplier security deposits	(3,450,000)
Cash payments to purchase electricity	(78,683,995)
Cash payments for staff compensation	(947,119)
Cash payments for contract services	(3,737,760)
Cash payments for communications	(488,344)
Cash payments for general and administration	(231,265)
Net cash provided (used) by operating activities	<u>23,825,226</u>

### CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Principal payments on loan	(168,448)
Deposits and collateral paid	(560,200)
Deposits and collateral returned	62,600
Interest expense payments	(31,552)
Net cash provided (used) by non-capital financing activities	<u>(697,600)</u>

### CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Acquisition of capital assets	<u>(59,633)</u>
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### CASH FLOWS FROM INVESTING ACTIVITIES

Purchase of certificate of deposit	(7,000,000)
Interest income received	995
Net cash provided (used) by investing activities	<u>(6,999,005)</u>

Net change in cash and cash equivalents	16,068,988
Cash and cash equivalents at beginning of year	12,726,406
Cash and cash equivalents at end of period	<u>\$ 28,795,394</u>

**SONOMA CLEAN POWER AUTHORITY**  
**STATEMENT OF CASH FLOWS (continued)**  
**July 1, 2015 through February 29, 2016**

**RECONCILIATION OF OPERATING INCOME TO NET  
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 21,854,011
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	25,130
(Increase) decrease in net accounts receivable	(1,757,147)
(Increase) decrease in accrued revenue	1,324,875
(Increase) decrease in prepaid expenses	664,007
Increase (decrease) in accounts payable	(59,894)
Increase (decrease) in accrued cost of electricity	4,889,888
Increase (decrease) in accrued liabilities	336,152
Increase (decrease) in user taxes and energy surcharges due to other governments	(1,796)
Increase (decrease) in supplier security deposits	(3,450,000)
Net cash provided (used) by operating activities	<u>\$ 23,825,226</u>

### Staff Update – Item 3

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To: Sonoma Clean Power Authority Board of Directors

From: Geof Syphers, CEO and Deb Emerson, Director of Power Services

Issue: Supply Contract for Power

Date: April 21, 2016

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#### Requested Actions

- (1) Receive a report from the BOC Chair on power contract negotiations reviewed at the Procurement Ad Hoc Committee (ad hoc) meeting, 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.

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

The proposed power contract is for ~40 MW of unit contingent Category 1 wind power on a 20-year term beginning January 1, 2018. The source will be constructed in Northern California.

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 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, 2018.



The estimated volume of energy to be delivered annually will be 156,000MWh. Payments are made for energy as it is delivered.

The proposed contract would improve SCP's estimated future financials relative to earlier projections, and support continued competitive rates. The price is flat for the entire 20-year term, and includes energy, capacity and green attributes sold together.

The project is a repowering opportunity where an existing wind farm will be decommissioned and a new wind project will be complete by the end of 2017. SCP's required collateral deposit amount is consistent with industry standards for collateral from entities without significant reserves. A cash collateral posting is anticipated for this project.

Primary review and contract negotiation of the legal terms of the proposed contract have been made by outside counsel, Keyes, Fox & Wiedman LLP, a legal firm specializing in Distributed Generation & Renewable Energy Law with deep experience in this field. Review of the power market terms was led by Deb Emerson, Director of Power Services.



**POWER PURCHASE AGREEMENT**

**between**

**Sonoma Clean Power Authority**

**as Purchaser**

**and**



**as Seller**

**dated as of**

**April \_\_, 2016**

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Exhibit A	Contract Rate
Exhibit B	Description of Wind Project
Exhibit B-1	Wind Project Site Plan
Exhibit C	Description of Delivery Point and One-Line Diagram
Exhibit D	Mechanical Availability Percentage
Exhibit E	Form of Consent (Financing)
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Exhibit J	Reserved
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Exhibit L	Form of Commercial Operation Certificate

**POWER PURCHASE AGREEMENT**

This POWER PURCHASE AGREEMENT (this “Agreement”) is made this \_\_ day of April, 2016 (the “Effective Date”), by and between Sonoma Clean Power Authority, a California Joint Powers Authority (“Purchaser”), and [REDACTED] (“Seller”). Purchaser and Seller are each individually referred to herein as a “Party” and collectively as the “Parties”.

**WITNESSETH:**

WHEREAS, Purchaser is a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) that provides retail electricity service to customers within its service area;

WHEREAS, Seller is developing and will own and operate a wind generation facility of approximately 41.2 MW aggregate nameplate capacity rating on a Site located in Alameda County, California; and

WHEREAS, Seller desires to sell, and Purchaser desires to purchase and receive, all of the Energy, Green Attributes, Capacity Rights and Other Attributes (as each are defined herein) from the Wind Project (as defined hereinafter), on the terms and conditions set forth herein.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

**ARTICLE 1  
DEFINITIONS**

**1.1 Definitions.**

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement have the meanings specified in this Article 1; (ii) the singular includes the plural and vice versa; (iii) references to “articles,” “sections,” “schedules,” “annexes,” “appendices” or exhibits” (if any) are to Articles, Sections, Schedules, Annexes, Appendices or Exhibits hereof; (iv) all references to a particular entity or pricing index include a reference to such entity’s or pricing index’s successors and permitted assigns; (v) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (viii) the masculine includes the feminine and neuter and vice versa; (ix) the words “include” and “including” or similar words are not words of limitation and shall be deemed to be followed by the words “without limitation”; (x) all references to dollars are U.S. dollars, and all amounts due, and payments made, under this Agreement, shall be paid in U.S. dollars; and (xi) “or” is not necessarily exclusive. The Parties collectively have prepared this Agreement, and none of the

provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

**“Affiliate”** means, with respect to any Person each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person.

**“After-Tax Basis”** means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the **“Base Payment”**) supplemented by a further payment (the **“Additional Payment”**) to that Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all federal, state and local income taxes required to be paid by such Person in respect to the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount of the Base Payment that was to have been received by such Person. Such calculations shall be made on the basis of the amounts of the highest generally applicable federal, state and local income tax applicable to a corporation for all relevant periods, and shall take into account the deductibility of state and local income taxes for federal income tax purposes.

**“Agreement”** is defined in the first paragraph hereof.

**“A.M. Best”** means A.M. Best Company, Inc.

**“Applicable Law”** means, with respect to any Person or the Wind Project, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person or the Wind Project (as the case may be).

**“Available Capacity”** means the capacity of the Wind Project that is available to generate and deliver Energy to the Delivery Point, expressed in megawatts.

**“Available Energy”** means Energy that would have been generated and delivered to the Delivery Point by the Wind Project, but for (i) a curtailment pursuant to a Purchaser Curtailment Order, (ii) a curtailment arising from or related to a Scheduling Failure, (iii) a suspension of Seller’s obligation to make Energy available due to a Purchaser Event of Default pursuant to Section 3.4(a), in any of such cases, from Turbines that would otherwise have been mechanically available for generation of Energy. The amount of Available Energy shall be determined by the Wind Project’s SCADA System or using the best information available at the time including wind speed data, number of operational Turbines, station service, weather conditions or physical limitations such as icing and any other factors relevant to the determination.

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

**“Availability Standards”** means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

**“Back-up Meter”** means a CAISO approved revenue quality meter installed by Seller pursuant to Section 4.2(d) that is capable of recording Energy delivered to Purchaser at the Delivery Point.

**“Bankruptcy Code”** means the United States Bankruptcy Code (11 U.S.C. § 101 et seq.), as amended, and any successor statute.

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

**“Business Day”** means any day other than a Saturday or Sunday or any other day on which banks in the State of California are permitted or required to remain closed.

**“CAISO”** means the California Independent System Operator Corporation.

**“CAISO Penalties”** means any fees, liabilities, assessments, sanctions, penalties or similar charges assessed, or otherwise billed to a Party, by the CAISO.

**“CAISO Tariff”** means the CAISO Operating Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended, supplemented or replaced (in whole or in part) from time to time; provided if there is a conflict between the CAISO Operating Agreement and Tariff, and the BPM, the CAISO Operating Agreement and Tariff will control.

**“California Public Records Act”** means California Government Code Section 6250 *et seq.*, as amended or supplemented from time to time.

**“California Renewables Portfolio Standard”** means the renewable energy program and policies established by California State Senate Bills 1038, 1078 and 2 of the First Extraordinary Session of 2011, codified in California Public Utilities Code Sections 399.11, *et seq.* and California Public Resources Code Sections 25740 *et seq.*, as implemented by the CPUC and CEC, as such program and policies may be amended or supplemented from time to time.

**“Capacity Rights”** means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Wind Project or the Wind Project’s capability and ability to produce energy. Capacity Rights shall be deemed to include all Resource Adequacy benefits, if any, associated with the Wind Project. Capacity Rights are measured in MW and shall exclude Energy, Green Attributes, Other

Attributes, and PTCs or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Wind Project.

“**CEC**” means the California Energy Commission.

“**CEC Certification and Verification**” means that the CEC has certified or pre-certified that the Wind Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Wind Project qualifies as generation from an ERR.

“**Commencement Date**” means the later of (i) the Commercial Operation Date and (ii) January 1, 2017.

“**Commercial Operation**” means the status of the Wind Project upon Seller’s satisfaction of all of the conditions set forth in Section 2.6(a).

“**Commercial Operation Date**” means, subject to Section 2.6(a), the date that Commercial Operation has commenced.

“**Compliance Expenditure Maximum**” is defined in Section 7.3(b).

“**Compliance Improvement**” is defined in Section 7.3(b).

“**Compliance Improvement Amount Agreement**” is defined in Section 7.3(b).

“**Compliance Improvement Notice**” is defined in Section 7.3(b).

“**Contract Rate**” is defined in Section 2.2(a).

“**Contract Year**” means a twelve (12) month calendar year commencing on the beginning of the Day on January 1 and ending at the end of the Day on December 31; provided, that the first Contract Year may be less than twelve months and shall commence at the beginning of the Day on the Commencement Date; provided, further, that the last Contract Year may be less than twelve (12) months and shall end at the end of the Day on date on which the Term ends.

“**Costs**” means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

“**CPUC**” means the California Public Utilities Commission.

**“Credit Rating”** means, with respect to a Person, on any date of determination, (a) the ratings assigned by Moody’s or S&P with respect to such Person’s long-term unsecured, senior indebtedness not supported by third party credit enhancement, or (b) if such Person does not have such a rating, then the rating assigned to such Person by Moody’s or S&P as its corporate credit rating or issuer rating. The standing guaranty of [REDACTED] in favor of Seller Guarantor shall not be considered to constitute “third party credit enhancement” for purposes of this definition.

**“Curtailment Period”** means the period of time during which there is any reduction in Energy deliveries to the Delivery Point as a result of any of the following:

- (a) the CAISO or other Governmental Authority orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries;
- (b) the Transmission Provider, or other Governmental Authority having similar authority or performing similar functions, orders, directs, alerts or provides notice to a Party to curtail Energy deliveries;
- (c) scheduled or unscheduled maintenance or construction on the Transmission Provider’s transmission or distribution facilities that prevents (i) Purchaser from receiving Energy at, or (ii) Seller from delivering Energy to, the Delivery Point; or
- (d) a curtailment by a third party (*i.e.*, an entity other than Seller) pursuant to the Interconnection Agreements or a curtailment by Seller pursuant to the Interconnection Agreements solely in the event of an Emergency Condition as defined therein.

**“Day” or “day”** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

**“Day-Ahead Availability Notice”** is defined in Section 2.9(b)(ii).

[REDACTED]

**“Debt Service Coverage Ratio”** shall mean net operating income from all sources, including draws from reserves, divided by total debt obligations due within one year (including interest, principal, sinking-fund and lease payments).

**“Delivery Point”** means the point, more specifically described in **Exhibit C**, where Seller’s Interconnection Facilities connect to the high voltage side of the Transmission Provider’s Transmission System, with such point located [REDACTED]

**“Delivery Term”** means the period beginning on the Commencement Date and continuing until the end of the Day on twentieth anniversary of the Commencement Date, unless sooner terminated in accordance with the terms of this Agreement.

**“Development Security”** is defined in Section 3.6(a).

**“Disclosing Party”** is defined in Section 8.1(a).

**“Dispute”** is defined in Section 8.16.

**“Downgrade Event”** occurs if either (i) the lowest of the Credit Ratings of the Seller Guarantor or Purchaser (as applicable): (A) is below “BBB-” with respect to S&P or (B) is below “Baa3” with respect to Moody’s or (ii) if Seller Guarantor or Purchaser (as applicable), ceases to have a Credit Rating, by either Moody’s or S&P.

**“Early Termination Date”** is defined in Section 3.4(b)(iii).

**“Effective Date”** is defined in the first paragraph of this Agreement.

**“Electrical Losses”** means all losses between the Wind Project and the Delivery Point, including any transmission or transformation losses between any of the Wind Project’s Meters and the Delivery Point.

**“Eligible Intermittent Resource 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, as may be amended or supplemented from time to time.

**“Energy”** means the net electric energy output generated exclusively by the Wind Project, which shall exclude station use, auxiliary loads or other electric energy consumed by the Wind Project and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

**“Environmental Contamination”** means the introduction or presence of hazardous materials (as such term is defined by Applicable Law, including 42 U.S.C. § 9601(14), including all forms of petroleum and natural gas) at such levels, quantities or location, or of such form or character, as to constitute a violation of Applicable Law, or present a risk under Applicable Law that the Site will not be available or usable for the purposes contemplated by this Agreement.

**“Event of Default”** is defined in Section 3.4(a).

**“FERC”** means the Federal Energy Regulatory Commission.

**“Final Wind Report”** means a report of [REDACTED] concerning the electric energy producing potential of the Site.

**“Forced Outage”** means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Wind Project to the Delivery Point that is due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or a Planned Outage.

**“Force Majeure Event”** means any event or circumstance that wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event or circumstance is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such event or circumstance, despite the exercise of reasonable diligence, cannot be prevented, avoided or overcome by such Party, (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof, and (iv) such event is not the direct or indirect result of a Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement or to comply with Applicable Law. A Force Majeure Event may include any of the following: (a) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) explosion, accident, plague or epidemic; (d) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties (except if such strike, lockout, industrial action or labor difficulties are specifically targeted at such Party, or such Party’s Affiliates, or the Wind Project); and (e) nuclear emergency or radioactive contamination or the release of any hazardous waste or materials. A Force Majeure Event shall not include: (i) lack of money; (ii) changes in market conditions, (iii) increased cost of labor, steel, parts or other materials; (iv) the lack of wind, sun or other fuel source of an inherently intermittent nature; (v) reductions in generation from the Wind Project resulting from operator error; (vi) curtailment or reduction in deliveries at the direction of a Transmission Provider or the CAISO when the basis of the curtailment or reduction in deliveries ordered by a Transmission Provider or the CAISO is congestion arising in the ordinary course of operations of the Transmission Provider’s system or the CAISO Controlled Grid, including congestion caused by outages or capacity reductions for maintenance, construction or repair; (vii) any delay in providing, or cancellation of, interconnection, distribution or transmission service by a Transmission Provider, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission Provider or (viii) any curtailment or reduction in deliveries of Energy from the Wind Project at the direction of Purchaser (or as a result of a Scheduling Failure) based on an outage or outages on Purchaser’s system (or any of Purchaser’s members) or other inability of Purchaser to have Energy transmitted to any point or points from and beyond the Delivery Point, except to the extent based on an outage on the CAISO system.

**“Forecast Procedures”** is defined in Section 2.9(b)(iii).

**“Forward Certificate Transfer”** has the meaning set forth in the WREGIS Operating Rules.

**“Gains”** means, with respect to a non-defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed to be the gain (if any) to such non-defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement.

**“Generator Operator”** means an operator that meets the requirements of Generator Operator as defined by NERC in its Statement of Compliance Registry Criteria (Revision 5.0), as amended or in a successor document.

**“Governmental Authority”** means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Purchaser or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing. For purposes of this Agreement, the term Government Authority shall include FERC, NERC (if applicable), WECC, CAISO, CPUC and CEC.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Wind Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Wind Project, (ii) production tax credits associated with the construction or operation of the Wind Project and other financial incentives in the form of credits, reductions, or allowances associated with the Wind Project that are applicable to a tax 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 Wind Project for compliance with local, state, or federal operating and/or air quality permits. If the Wind Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Purchaser with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Wind Project.

**“Guaranteed Commercial Operation Date”** is defined in Section 2.5(d).

**“Guaranteed Mechanical Availability Percentage”** is defined in Section 5.5(a).

**“Interconnection Agreements”** means (a) the Large Generator Interconnection Agreements, (b) the Distribution Service Agreements, (c) the Transmission Service Agreements, (d) the Participating Generator Agreements, and (e) the Metering Service Agreement to be entered into separately between Seller, Transmission Provider and CAISO (as appropriate).

**“Investment Grade”** means a Credit Rating of at least “Baa3” with respect to Moody’s and at least “BBB-” with respect to S&P.

**“Late Payment Rate”** is defined in Section 4.1(c).

**“Lender”** means any and all Persons or successors in interest thereof, other than an Affiliate of Seller, (a) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Wind Project; (ii) for working capital or other ordinary business requirements of the Wind Project (including the maintenance, repair, replacement or improvement of the Wind Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Wind Project; (iv) for any capital improvement or replacement related to the Wind Project; or (v) in connection with the financing of a portfolio of projects that includes the Facility; (b) participating (directly or indirectly) as a Tax Equity Investor; or (c) a lessor under a lease finance arrangement of the Wind Project.

**“Lender Consent”** means a Consent and Agreement in the form of **Exhibit E**.

**“Letter of Credit”** means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution and in the form of **Exhibit G**.

**“Losses”** means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. If the non-defaulting Party is the Seller,

then “Losses” shall exclude any loss of the PTC, or other federal or state tax credits, grants, or benefits related to the Project or generation therefrom.

“*MAP Damages*” is defined in **Exhibit D**.

“*Maximum Wind Project Capacity*” is defined in Section 2.5(b).

“*Mechanical Availability Percentage*” or “*MAP*” is defined in **Exhibit D**.

“*Meter*” means the revenue quality meters, data processing gateways or remote intelligence gateways, telemetering equipment and data acquisition services that are dedicated exclusively to the Wind Project and are sufficient for monitoring, recording and reporting, in real time, all Product from the Wind Project, as required and specified in the CAISO Tariff.

“*Meteorological Station*” is defined in Section 4.4.

“*Milestone Schedule*” means Seller’s schedule to develop the Wind Project as set forth in **Exhibit I**.

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

“*MW*” means a megawatt.

“*MWh*” means a megawatt hour.

“*Nameplate Capacity Rating*” means the maximum installed instantaneous generation capacity of the completed Wind Project, expressed in MW, when operated in compliance with the Interconnection Agreements and consistent with the Turbine manufacturer’s recommended power factor and operating parameters.

“*NERC*” means the North American Electric Reliability Corporation.

“*NERC Reliability Standards*” means standards and rules that are adopted by NERC or WECC and approved by the applicable Governmental Authorities.

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

“*Operating Procedures*” is defined in Section 2.12.

“*Operating Security*” is defined in Section 3.6(b).

“*Other Attributes*” means any and all attributes, products or services, associated with the existence or operation of the Wind Project that may be claimed or tracked other than: (a)

Energy, (b) Green Attributes, (c) Capacity Rights; and, (d) any tax benefits belonging to Seller pursuant to Section 2.4(e).

**“Outage Schedule”** is defined in Section 2.9(d)(ii).

**“Pacific Prevailing Time”** means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

**“Participating Intermittent Resource Program”** or **“PIRP”** has the meaning set forth in the CAISO Tariff.

**“Parties”** is defined in the first paragraph of this Agreement.

**“Party”** is defined in the first paragraph of this Agreement.

**“Permits”** means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority in order to develop, construct, operate, maintain, improve, refurbish and retire the Wind Project or to forecast or deliver the Product produced by the Wind Project to Purchaser.

**“Permitted Extension”** is defined in Section 2.5(d).

**“Person”** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

**“Planned Outage”** means an interruption of all or a portion of the capability of the Wind Project to generate or deliver Energy to the Delivery Point that is scheduled in the Outage Schedule delivered to Purchaser pursuant to Section 2.9(d)(ii) and is required for inspection, preventive maintenance or corrective maintenance.

**“Prime Rate”** means the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

**“Product”** means Energy, Green Attributes, Capacity Rights, and Other Attributes, generated by, attributed to, or associated with, the Wind Project.

**“Prudent Operating Practices”** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the wind electric generation industry 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 Applicable Law, reliability, safety, environmental protection and standards of economy and expedition.

**“PTC”** means the tax credit applicable to electricity produced from certain renewable resources pursuant to Section 45 of the Internal Revenue Code (as amended from time to time), or substantial equivalent that provides Seller with a tax credit based on energy production from any portion of the Wind Project.

**“PTC Rate”** shall mean the current applicable amount of the PTC (on a per MWh basis) on an After-Tax Basis as set forth in the applicable Internal Revenue Service guidance.

**“Purchaser”** is defined in the first paragraph of this Agreement.

**“Purchaser Collateral”** is defined in Section 3.6(c).

**“Purchaser Curtailment Order”** means either a written instruction or telephonic instruction later confirmed in writing from Purchaser to Seller, issued for any reason in Purchaser’s sole discretion, ordering that Seller reduce generation from the Wind Project by an amount, in whole MWh increments, and for the period of time set forth in such order; provided, Purchaser Curtailment Orders shall be limited to a quantity of not more than four (4) curtailment cycles per Day; provided further, any extension by Purchaser to an existing Purchaser Curtailment Order shall not count as a separate curtailment cycle. Any curtailment of Energy during a Curtailment Period shall be deemed not to be attributable to a Purchaser Curtailment Order.

**“Qualified Institution”** means a major U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least “A-” by S&P and “A3” by Moody’s (without a “credit watch”, “negative outlook” or other rating decline alert if its’ Credit Rating is “A-” by S&P or “A3” by Moody’s), and having assets of [REDACTED]

**“Receiving Party”** is defined in Section 8.1(a).

**“Renewable Energy Credit”** has the meaning set forth in California Public Utilities Code Section 399.12(e) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Applicable Law.

**“Resource Adequacy”** means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.10-04-012 and R.11-10-023 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

**“Revenue Maintenance Requirement”** shall mean the minimum amount of anticipated and actual gross revenues that Purchaser is required to maintain pursuant to Section 5.5(a)(iv).

**“SCADA System”** means the automated system that meters and collects: (a) availability and power generation from each Turbine; (b) wind direction, wind speed, temperature and pressure from the Meteorological Station; and, (c) other operational parameters describing the state of the Wind Project.

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

**“Scheduling Failure”** means that the Wind Project is curtailed or not dispatched by CAISO, except during periods and to the extent that (a) such curtailment is the result of any of the following: (i) a Planned Outage or Forced Outage, (ii) an outage not constituting a Planned Outage or a Forced Outage undertaken to construct, install, maintain, repair, replace, remove or inspect any of Seller’s equipment or facilities or in connection with a condition likely to result in significant damage to Seller’s equipment or if Seller otherwise reasonably deems such curtailment necessary to protect life or property, (iii) because the interconnection between the Wind Project and the Transmission Provider’s Transmission System is otherwise disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreements, or (iv) a Force Majeure Event or (b) Purchaser, or Purchaser’s market designee, has submitted a Bid for the Wind Project for such period providing for (i) an amount of Energy equal to or greater than the full forecasted output of the Wind Project for such period and (ii) an offer price for such Energy that is equal to or less than the location marginal price applicable to the Delivery Point for such period.

**“Scheduling Procedures”** is defined in Section 2.9(a)(ii).

**“Self-Insurer”** is defined in Section 6.2(f).

**“Seller”** is defined in the first paragraph of this Agreement.

**“Seller Guarantor”** is defined in Section 3.6(a).

**“Seller Guaranty”** is defined in Section 3.6(a).

**“Seller’s Interconnection Facilities”** means all of the interconnection facilities, control and protective devices, distribution facilities, metering facilities and other equipment and facilities, whether or not the facilities, devices and equipment are owned by Seller, required to connect the Wind Project with the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System located up to, and on Seller’s side of, the Delivery Point, including any modification, addition or upgrades to such facilities.

“**Site**” means the real property located in Alameda County, California on which the Wind Project is located, as more fully described on **Exhibits B and B-1**.

“**S&P**” means Standard and Poor’s Ratings Group (a division of McGraw Hill Inc.).

“**Tax Equity Investor**” means an equity investor in the Wind Project that is not an Affiliate of Seller, and whose investment in the Wind Project is intended to be consistent with the “Safe Harbor” for wind transactions under Revenue Procedure 2007-65 and Announcement 2009-69.

“**Term**” is defined in Section 3.1.

“**Termination Payment**” means the amount equal to the sum of Losses, Gains, and Costs, which the non-defaulting Party incurs as a result of the termination of this Agreement, calculated in a manner consistent with Section 3.4(c)(ii).

“**Transfer Taxes**” is defined in Section 2.2(c).

“**Transmission Provider**” means Pacific Gas & Electric Company in its capacity as owner of the facilities used for the transmission or distribution of electric energy to, at or from the Delivery Point.

“**Transmission Provider’s Interconnection Facilities**” means all facilities and equipment owned by the Transmission Provider and controlled or operated by CAISO, required to connect the Transmission Provider’s Transmission System with the Wind Project up to, and on the Transmission Provider’s side of, the Delivery Point (i.e., after Purchaser takes title to Product pursuant to Section 2.7).

“**Transmission Provider’s Transmission System**” means the facilities owned or operated by the Transmission Provider, and controlled by CAISO, for the transmission of Energy from the Delivery Point.

“**Turbine**” means a single General Electric 1.7 MW – 103 meter wind turbine generating system, including the tower, pad, transformer and controller system, installed as part of the Wind Project.

“**Turbine Limitations**” is defined in Section 2.8(c)(ii).

“**WECC**” means the Western Electricity Coordinating Council.

“**Wind Project**” means Seller’s proposed electrical plant and equipment used to generate electricity utilizing exclusively renewable wind power and located at the Site, including the Turbines, Seller’s Interconnection Facilities and any and all additions, replacements or modifications. The Wind Project is more particularly described in **Exhibits B and B-1**.

“**Wind Project Operator**” means the Affiliate of Seller that operates the Wind Project.

“**WREGIS**” means the Western Renewable Energy Generating Information System or any successor program that may be implemented to track and record compliance with the California Renewable Portfolio Standard.

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

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

## **ARTICLE 2 SALE AND PURCHASE OF ENERGY**

### **2.1 *Purchase and Sale of Energy.***

(a) In accordance with and subject to the terms and conditions hereof, at all times during the Delivery Term, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all of the Energy delivered to the Delivery Point.

(b) Notwithstanding the foregoing: (i) Seller’s obligation to sell and deliver Energy to Purchaser at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) periods of curtailment requested by Purchaser as set forth in a Purchaser Curtailment Order, (C) a Curtailment Period; provided, such Curtailment Period is not attributable to Seller’s breach of its obligations under this Agreement or any other agreement, or (D) a period of Seller suspension due to a Purchaser Event of Default pursuant to Section 3.4(a); (ii) Purchaser’s obligation to accept Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) periods of curtailment requested by Purchaser as set forth in a Purchaser Curtailment Order, (C) a Curtailment Period, or (D) a period of Purchaser suspension due to a Seller Event of Default pursuant to Section 3.4(a); and, (iii) Purchaser’s obligation to purchase Energy from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period, provided such Curtailment Period is not attributable to a Scheduling Failure or Purchaser’s breach of its obligations under this Agreement or any other agreement, or (C) a period of Purchaser suspension due to a Seller Event of Default pursuant to Section 3.4(a).

### **2.2 *Contract Rate.***

(a) Purchaser shall pay Seller the applicable rate set forth in **Exhibit A** (the “Contract Rate”) for each MWh of Energy that Seller delivers to Purchaser at the Delivery Point during the Delivery Term.

(b) During the Delivery Term, except for the performance excuse periods described in Section 2.1(b)(iii), Purchaser shall pay Seller the Contract Rate for Available Energy, plus the product of (i) all such Available Energy and (ii) the applicable PTC Rate.

(c) In addition to the amounts otherwise payable by Purchaser in accordance with this Section 2.2, Purchaser shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all sales, use, excise, ad valorem, transfer and other similar taxes arising out of or with respect to the purchase or sale of Product (“Transfer Taxes”), but excluding all taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Product (regardless of whether such Transfer Taxes are imposed on Purchaser or Seller) at and beyond the Delivery Point, together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes. Seller shall indemnify and hold Purchaser harmless on an After-Tax Basis from and against Transfer Taxes or similar taxes on Product imposed by any taxing authority up to the Delivery Point, including wind severance taxes and taxes on generation of wind energy and taxes on Seller’s income. In all events, property taxes or special assessments that may be levied upon the Wind Project as well as state or local sales taxes applicable to the construction, maintenance, repair or operation of the Wind Project shall be borne by the Seller, and paid by Seller when due. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

### **2.3 Dedication.**

(a) During the Delivery Term, Seller shall not deliver, schedule or sell Product to any Person other than Purchaser.

### **2.4 Purchase and Sale of Green Attributes; Tax Credits.**

(a) Purchaser shall be entitled to all Green Attributes resulting from the generation of Energy purchased by Purchaser pursuant to this Agreement. The consideration for all such Green Attributes is included within the Contract Rate for Energy. Purchaser shall not be entitled to any Renewable Energy Credits, or Green Attributes from the generation of Energy that Purchaser, for any reason, does not accept and purchase under this Agreement.

(b) Title to the Green Attributes shall pass from Seller to Purchaser free and clear of all liens, security interests, claims and encumbrances immediately upon the generation of the associated Energy at the Wind Project that gives rise to such Green Attributes. Seller shall not report under § 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Attributes purchased by Purchaser hereunder belong to any person other than Purchaser.

(c) Subject to Section 7.3 and at all times during the Delivery Term, Seller shall, at its sole cost, implement and maintain all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to WREGIS-approved meters that are dedicated to the Wind Project and only the Wind Project. Purchaser has registered and has established a general account (WREGIS Account Holder ID: [\_\_\_\_]) with WREGIS. Within

ten (10) Business Days following the commencement of the Delivery Term, Seller shall: (i) transfer to Purchaser's WREGIS account any and all WREGIS Certificates associated with Renewable Energy Credits corresponding to that Energy generated by the Wind Project and purchased by Purchaser, and (ii) pursuant to Section 15.5 of the WREGIS Operating Rules, implement a Forward Certificate Transfer to Purchaser's WREGIS account for the WREGIS Certificates associated with all the Renewable Energy Credits generated by the Wind Project during the Delivery Term. Seller covenants that such Forward Certificate Transfer shall be effective for the remainder of the Delivery Term. Purchaser shall comply with all reporting and other requirements of WREGIS with respect to Green Attributes it purchases from Seller; provided, Seller shall provide promptly to Purchaser that Wind Project data and information reasonably necessary in order for Purchaser to comply with such WREGIS requirements. Upon termination of this Agreement, Seller shall rescind the Forward Certificate Transfer and Purchaser shall promptly assign and transfer back to Seller any Green Attributes existing in Purchaser's WREGIS account not purchased and paid for by Purchaser.

(d) Seller shall cooperate reasonably with Purchaser, at Purchaser's expense:

(i) in order for Purchaser to register, hold, and manage such Green Attributes in Purchaser's own name and to Purchaser's accounts, including any rights associated with any renewable energy information or tracking system that may be established with regard to monitoring, tracking, certifying, or trading such Green Attributes;

(ii) in any registration by Purchaser of the Wind Project in the renewable portfolio standard or equivalent program in all states other than California and other non-California programs in which Purchaser may wish to register or maintain registration of the Wind Project by providing copies of all such information as Purchaser reasonably requests for such registration;

(e) Seller shall be entitled to all PTCs or other production or investment tax credits that are or will be generated by the Wind Project associated with the Energy purchased by Purchaser.

## **2.5 *New Generation Facility.***

(a) Seller, at no cost to Purchaser, shall be responsible for: (i) designing and constructing the Wind Project; (ii) acquiring and maintaining all Permits and other approvals necessary for the construction, operation, and maintenance of the Wind Project throughout the Term; and, (iii) completing, updating and maintaining all environmental impact, and plant and wildlife impact, studies and mitigation, necessary for the construction, operation, and maintenance of the Wind Project.

(b) Maximum Size. Seller shall not increase the Nameplate Capacity Rating of the Wind Project beyond 48 MW (the "Maximum Wind Project Capacity") without Purchaser's prior written consent. If Seller's officer's certificate delivered pursuant to Section 2.6(a) indicates that the Wind Project commenced Commercial Operation with a Nameplate Capacity Rating less than 41.2 MW (but in no event less than 37 MW), then Seller shall install and place into service the remaining Turbines no later than the Guaranteed Commercial Operation Date.

(c) Reporting and Provision of Information.

(i) Progress Reporting Toward Meeting Milestone Schedule. Seller shall use commercially reasonable efforts to meet the Milestone Schedule and avoid or minimize any delays in meeting such schedule; provided, that the price Seller may receive for Energy or other Product prior to the commencement of the Delivery Term shall not be relevant in determining whether or not Seller's efforts to meet the milestones for Commercial Operation are commercially reasonable. Within ten (10) Days after the end of each month after the Effective Date and until the Commercial Operation Date, Seller shall provide Purchaser a monthly written report of its progress toward meeting the Milestone Schedule. In addition, Seller shall advise Purchaser as soon as reasonably practicable of any problems or issues of which Seller is aware which may impact Seller's ability to meet the Milestone Schedule and the anticipated Commercial Operation Date.

(ii) Provision of Information. Seller shall provide promptly to Purchaser copies of:

(A) the final Interconnection Agreements, subject to any confidentiality restrictions contained therein; and

(B) the Final Wind Report, and any updates thereafter for the time period beginning on the Effective Date and ending on the Commercial Operation Date.

(d) Commercial Operation Date. Seller shall have demonstrated Commercial Operation, after giving effect to Force Majeure Events, no later than December 31, 2018 (the "Guaranteed Commercial Operation Date"); provided, if Seller complies with Section 2.5(d)(i), the Guaranteed Commercial Operation Date may be extended on a day for day basis for not more than three hundred sixty five (365) days if completion of construction and commencement of operation of the Wind Project is not attained by such date as a result of a Force Majeure Event or a failure to obtain a permit or secure a transmission commitment, in each case, necessary to complete the construction and commence operation of the Wind Project by such date, so long as Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to overcome such Force Majeure Event, obtain such permit or secure such transmission commitment, as applicable ("Permitted Extension").

(i) In order to secure a Permitted Extension, Seller shall provide Purchaser written notice within ten (10) Days of Seller becoming aware of the facts or circumstances giving rise to the Permitted Extension. Such notice must clearly identify the reason for the Permitted Extension being claimed including the extent and anticipated period of delay.

(ii) If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, after giving effect to all Force Majeure Events and Permitted Extensions, then Seller shall pay to Purchaser liquidated damages equal to Daily Delay Damages for each day until such time as the Commercial Operation Date is achieved; provided that the aggregate amount of Daily Delay Damages shall [REDACTED]. In the event any Daily Delay Damages are due, Purchaser shall provide Seller, on a monthly basis, with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such Daily Delay Damages within thirty (30) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.15 hereof. If Seller fails to make to

Purchaser a Daily Delay Damages payment, then Purchaser shall be entitled to draw upon the Seller Guaranty (as provided for in Section 3.6(a)) to satisfy the outstanding balance. Except with respect to Daily Delay Damages previously incurred, Seller's obligation to pay additional Daily Delay Damages shall end on the Commercial Operation Date or on the effective date of Agreement termination pursuant to Section 2.5(e).

(iii) If the Commercial Operation Date occurs on or prior to the Guaranteed Commercial Operation Date with a Nameplate Capacity Rating of less than 41.2 MW, and the Nameplate Capacity Rating remains less than 41.2 MW on the Guaranteed Commercial Operation Date, after giving effect to all Force Majeure Events and Permitted Extensions, then Seller shall pay to Purchaser liquidated damages [REDACTED]

[REDACTED] In the event any Capacity Damages are due, Purchaser shall provide Seller, on a monthly basis, with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such Capacity Damages within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.15 hereof. If Seller fails to make to Purchaser any Capacity Damages payment, then Purchaser shall be entitled to draw upon the Seller Guaranty (as provided for in Section 3.6(a)) to satisfy the outstanding balance.

(iv) Each Party agrees and acknowledges that (A) the damages that Purchaser would incur due to Seller's delay in achieving the Guaranteed Commercial Operation Date or a Nameplate Capacity Rating of 41.2 MW would be difficult or impossible to predict with certainty, and (B) the Daily Delay Damages and Capacity Damages, respectively, are an appropriate approximation of such damages.

(e) [REDACTED]

[REDACTED]

[REDACTED]

## 2.6 *Commercial Operation.*

(a) Subject to the remainder of this Section 2.6(a), the Commercial Operation Date shall be a date selected by Seller upon at least three (3) Business Days' notice to Purchaser; provided, that on or prior to the Commercial Operation Date:

(i) Seller first provides to Purchaser an officer's certificate, in the form attached hereto as **Exhibit L**, certifying that Commercial Operation shall have occurred with a Nameplate Capacity Rating no less than 37 MW and no greater than 48 MW.

(ii) Seller shall have provided Purchaser with its CEC pre-Certification and Verification;

(iii) Seller shall have cooperated with Purchaser in order that Purchaser may be authorized by the CAISO to schedule the Energy produced by the Wind Project with the CAISO for the Delivery Term; provided, if Purchaser or Purchaser's SC is not authorized to be the Scheduling Coordinator for the Wind Project, Seller shall serve as the Scheduling Coordinator for the Wind Project until such time Purchaser or Purchaser's SC is authorized to act as the Wind Project's Scheduling Coordinator;

(iv) Seller shall have executed all necessary Transmission Provider and CAISO agreements, including all the Interconnection Agreements, and CAISO shall have authorized deliveries from the Wind Project to the Delivery Point;

(v) all the facilities required by the Interconnection Agreements, including Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities, shall have been installed, tested and are completed as required by the Interconnection Agreements;

(vi) Seller shall be capable on the Commencement Date of complying with the Forecasting Procedures in accordance with Section 2.9(b);

(vii) Seller shall be capable of commencing delivery of the Product to Purchaser on the Commencement Date;

(viii) Seller shall have installed and placed in operation its Meters consistent with Section 4.2 and the equipment and systems required under Section 4.4;

(ix) Seller shall have furnished to Purchaser the Final Wind Report;

(x) Seller shall have applied to enter PIRP and shall be enrolled as a participant in PIRP no later than thirty (30) calendar days from the Commencement Date;

(xi) Seller shall have registered with WREGIS and taken all steps necessary for the creation of WREGIS Certificates; and

(xii) to the extent required by NERC, WECC or FERC, Seller shall have caused the Wind Project Operator to register with NERC as the Generator Operator of the Wind Project.

(b) Commercial Operation shall be deemed to have occurred upon delivery of the officer's certificate by Seller provided for in Section 2.6(a)(i) as to the satisfaction by Seller of the provisions of Section 2.6(a); however, if Purchaser disagrees with Seller's determination that the Wind Project has commenced Commercial Operation, Purchaser shall promptly notify Seller of such disagreement. Any dispute between the Parties as to whether the Commercial Operation Date has occurred shall be resolved in accordance with the provisions set forth in Section 8.15.

(c) Seller hereby represents to Purchaser that Seller is precluded from selling any Product to Purchaser until the CAISO has provided it with certain authorizations for which Seller has already applied. Seller shall use commercially reasonable efforts to secure such CAISO authorizations as soon as practicable.

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

Seller shall hold all rights, title and interest to all Product which Seller has conveyed and has committed to convey to Purchaser hereunder. Title to and risk of loss with respect to any Product purchased by and delivered to Purchaser by Seller in accordance with this Agreement shall pass from Seller to Purchaser at the Delivery Point, and such Product shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any other Person at the time of Seller's delivery. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to Product passes to Purchaser, as between the Parties, Purchaser shall be deemed in exclusive control of such Product and shall be responsible for any damage or injury caused thereby. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Wind Project's eligibility to receive PTCs, other tax benefits, or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the Seller is eligible for, or receives, PTCs or any other tax benefits.

## **2.8 Transmission/Curtailment.**

(a) Seller's Transmission Service Obligations. Prior to the Commencement Date and at all times during the Delivery Term:

(i) Seller shall arrange and pay for any and all facilities (and any regulatory approvals required for the foregoing), that are necessary for Seller to deliver Product to the Purchaser, including all Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities that are necessary for Seller to deliver Energy to the Delivery Point for sale pursuant to the terms of this Agreement.

(ii) Seller shall bear all risks and costs associated with distribution and transmission service, including any Electrical Losses, outages or curtailment of Energy deliveries, to the Delivery Point.

(iv) Seller shall comply with all contractual, metering and applicable

interconnection requirements, including those set forth in the Interconnection Agreements, Transmission Provider's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy to the Delivery Point.

(b) Purchaser's Transmission Service Obligations. At all times during the Delivery Term:

(i) Purchaser shall arrange and be responsible for transmission service at and from the Delivery Point.

(ii) Purchaser shall schedule, or arrange for Purchaser's SC to schedule, with the Transmission Provider and CAISO (as appropriate), Energy deliveries from Seller received at the Delivery Point.

(iii) Except as provided herein or to the extent attributable to Seller's acts or omissions, Purchaser shall be responsible for all CAISO costs, CAISO Penalties, Electrical Losses and congestion at and from the Delivery Point and after Purchaser takes title to Product delivered by Seller under this Agreement.

(c) Curtailement. Seller shall fully or partially curtail deliveries of Energy to Purchaser during, and to the extent required by, a Curtailement Period or a Purchaser Curtailement Order.

(i) Curtailement Periods. Seller shall curtail the generation or delivery of Energy as directed by CAISO, the Transmission Owner, or a Governmental Authority, or as such reductions or curtailments are communicated to Seller by Purchaser at the direction of CAISO, the Transmission Provider or a Governmental Authority, during any Curtailement Period. To the extent an event arises that causes Seller to curtail Energy deliveries to Purchaser at the Delivery Point, Seller shall use commercially reasonable efforts to minimize the extent, amount and duration of any such curtailments.

(ii) Purchaser Curtailement Orders. Purchaser shall have the right to order Seller to reduce generation from the Wind Project pursuant to a Purchaser Curtailement Order; provided: (i) Purchaser shall give Seller not less than thirty (30) minutes' notice prior to the requested curtailement, (ii) such Purchaser Curtailement Order does not violate the Turbine manufacturer's operating limits of the Turbines (the "Turbine Limitations") in which case Seller may refuse to implement such curtailement in such time frame without any liability to Purchaser; provided, Seller must continue to curtail Energy in a manner that is consistent with the Turbine Limitations, and (iii) Purchaser shall pay Seller for all such Available Energy not delivered to Purchaser that is associated with any Purchaser Curtailement Order in accordance with Section 2.2(b). If Seller does not comply with a Purchaser Curtailement Order, then for each MWh of delivered Energy that the Wind Project generated during the pendency of a Purchaser Curtailement Order, Purchaser shall pay Seller all revenues that Purchaser receives for such Energy, and Seller shall pay directly, or reimburse Purchaser, for all costs, CAISO Penalties, other penalties, or other liabilities associated with or attributable to Seller's deliveries of Energy during the pendency of the Purchaser Curtailement Order. Seller shall, within one hundred and eighty days (180) days of the expected Commencement Date, provide Purchaser with the Turbine Limitations for the Turbines.

(iii) Notwithstanding the forgoing, if Seller fails to curtail deliveries of Energy during a Curtailment Period, or in accordance with a Purchaser Curtailment Order; Seller shall assume all liability, be responsible for, and hold harmless Purchaser, for any and all CAISO Penalties, other penalties, costs or charges incurred by Purchaser due to Seller's failure to curtail. In the event any such penalties, costs or charges are incurred by Purchaser due to Seller's failure to curtail, Purchaser shall provide Seller with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such amounts within fifteen (15) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.15 hereof.

## **2.9 *Scheduling, Forecasting, EIRP and Outage Notification.***

(a) Scheduling Coordinator. During the Delivery Term, Purchaser, or a SC selected by Purchaser, shall act as the Scheduling Coordinator for the Wind Project. In that regard, Purchaser and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator. Within twenty (20) Business Days of the Effective Date, Seller shall take all actions and execute and deliver to Purchaser all documents necessary to authorize or designate Purchaser, or Purchaser's SC, as Seller's Scheduling Coordinator so that such designation becomes effective as of the commencement of the Delivery Term. Purchaser or Purchaser's SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator effective as of the commencement of the Delivery Term. If Purchaser designates a Purchaser's SC, then Purchaser shall give Seller notice of such designation at least ten (10) Business Days before such Purchaser's SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Purchaser's SC is appointed by Purchaser upon similar notice. Notwithstanding the foregoing, if Purchaser or Purchaser's SC is not authorized to be the Scheduling Coordinator for the Wind Project as of the commencement of the Delivery Term, Seller shall serve as the Scheduling Coordinator for the Wind Project until such time Purchaser or Purchaser's SC is authorized to act as the Wind Project's Scheduling Coordinator. Purchaser shall be fully responsible for all acts and omissions of any such Purchaser's SC and shall indemnify Seller for all CAISO Penalties, cost, charges and liabilities incurred by the Purchaser's SC to the same extent that Purchaser would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Purchaser directly. Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor, except as specifically provided herein, shall Seller perform, for its own benefit, the duties of Scheduling Coordinator after Purchaser, or Purchaser's SC, assumes such duties.

(ii) Purchaser's Responsibilities as Scheduling Coordinator. As soon as it is authorized to act as the Wind Project's Scheduling Coordinator, Purchaser (or Purchaser's SC) shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all scheduling and Bid submissions in full compliance with the terms and conditions of this Agreement and the CAISO's protocol and scheduling practices, including the requirements of EIRP, if applicable (the "Scheduling Procedures"). Upon Seller's request, Purchaser shall, within three (3) Business Days of such request, provide to Seller any supporting documentation

necessary for Seller to audit and verify matters related to Purchaser's or Purchaser SC's Bids of the Wind Project into the CAISO market. Except as provided herein or to the extent attributable to Seller's acts or omissions, Purchaser shall be responsible for the payment of all charges associated with its scheduling activities, including all charges assessed by the CAISO (including CAISO Penalties) with respect to scheduling and imbalances.

(iii) Purchaser shall have the right from time to time during the Term, at Purchaser's sole cost and expense, to enter into contracts with wind forecast service providers for the provision of forecasts respecting the Wind Project. In such event, Purchaser shall provide Seller reasonable advance written notice thereof with the date of commencement of such service; provided, if requested by Seller, such wind forecaster selected by Purchaser shall execute a confidentiality agreement in form and substance reasonably satisfactory to Seller.

(b) Forecast Procedures. Seller shall, at its sole cost, and at all times during the Term:

(i) subject to Section 7.3, comply, and if applicable provide Purchaser or Purchaser's SC with information in a manner and time frame that allows Purchaser or Purchaser's SC to comply, with the CAISO's forecasting and associated data collection requirements as set forth in the CAISO Tariff (including, as applicable, Appendix Q thereof);

(ii) provide to Purchaser a day-ahead estimate of Available Capacity (the "Day-Ahead Availability Notice") for each day no later than as required by WECC, which at a minimum shall be no more than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. Seller shall notify Purchaser of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, within thirty (30) minutes of the event. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, and the expected Available Capacity in MW during such event. Seller shall keep Purchaser informed of any developments that will affect either the duration of such outage or the availability of the Wind Project during or after the end of such outage; and

(iii) subject to Section 7.3, if any Governmental Authority imposes forecasting requirements associated with the Product, comply, and provide Purchaser or Purchaser's SC with information in a manner and time frame that allows Purchaser or Purchaser's SC to comply with such forecasting requirements ((i), (ii) and (iii) above, the "Forecast Procedures").

(iv) provide to Purchaser a hour-ahead, month-ahead, and year-ahead forecast of Available Capacity.

(c) Each Party shall perform its respective scheduling and forecasting obligations in compliance with all applicable: (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Prudent Operating Practices. Seller shall assume all liability and be responsible for any and all CAISO Penalties (or other penalties, costs or charges) incurred by Purchaser or Purchaser's SC, due to Seller's failure to comply with the Forecasting Procedures or Scheduling Procedures or Seller's failure to comply with its obligations set forth in Section 2.9(d). Purchaser shall assume all liability and be responsible for any and all CAISO Penalties (or other penalties, costs or charges) incurred by Seller

due to Purchaser's failure to comply with the Scheduling Procedures. Any invoice submitted by either Purchaser or Seller related to CAISO Penalties shall include the related CAISO invoice and a written statement explaining in reasonable detail the calculation of the amount due. Any disputes with respect to such amounts shall be resolved in accordance with Article 4 and Section 8.15.

(d) Outage Notification.

(i) Seller is responsible for notifying CAISO with respect to, and securing any necessary CAISO approvals for, all Wind Project outages, including Forced Outages and Planned Outages, and Seller shall comply with all CAISO reporting requirements with regard to outages through use of the CAISO SLIC electronic-outage reporting system (or a successor reporting system); provided that in the event of Seller's repeated failure to comply with its CAISO reporting obligations set forth in this Section 2.9(d)(i), Purchaser may assume any of such CAISO reporting obligations upon five (5) Business Days' notice, with such notice from Purchaser specifying those CAISO reporting obligations that Purchaser will assume. Seller shall be responsible for securing CAISO approval for changes in its outage schedules when CAISO disapproves Seller's proposed schedules or if there is any cancellation of previously approved outages. Seller shall simultaneously provide Purchaser with a copy of any communications with CAISO with respect to outages.

(ii) No later than (A) thirty (30) days prior to the anticipated Commencement Date, and (B) at least at least sixty (60) days before July 1 of each calendar year throughout the Term, Seller shall submit to Purchaser, Seller's schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twenty four (24) month period, and Seller shall provide the following information for each proposed Planned Outage:

- (1) start date and time;
- (2) end date and time;
- (3) Available Capacity in MW, during the Planned Outage, and
- (4) purpose for the Planned Outage.

(iii) Seller shall use commercially reasonable efforts consistent with Prudent Operating Practices not to schedule Planned Outages during the months of July to September without the prior written authorization of Purchaser.

(iv) Within thirty (30) days after Purchaser's receipt of a proposed Outage Schedule, Purchaser shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, use commercially reasonable efforts to accommodate Purchaser's requests regarding the timing of any Planned Outage. If a condition occurs at the Wind Project that causes Seller to revise its Planned Outages, Seller shall provide prompt notice to Purchaser, which notice shall be provided within three (3) Business Days of Seller's becoming aware of such condition or revision (including an estimate of the length of such Planned Outage).

(v) Seller shall notify Purchaser of a Forced Outage consistent with the Forecasting Procedure set forth at Section 2.9(b)(ii).

## **2.10 Capacity Rights and Other Attributes.**

(a) Purchaser shall be entitled to all Capacity Rights and Other Attributes, if any, associated with the Wind Project during the Delivery Term. The consideration for all such Capacity Rights and Other Attributes is included within the Contract Rate. Seller transfers to Purchaser, and Purchaser accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights and Other Attributes, if any, existing during the Delivery Term.

(b) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Rights or Other Attributes, if any, and Seller shall not report to any person or entity that the Capacity Rights or Other Attributes, if any, belong to anyone other than Purchaser. Purchaser may, at its own risk and expense, report to any person or entity that Capacity Rights or Other Attributes belong exclusively to Purchaser.

(c) At Purchaser's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights or Other Attributes, if any, to Purchaser, and (ii) cooperate reasonably with Purchaser in order that Purchaser may satisfy the Resource Adequacy requirements, if any, including (A) assisting Purchaser in registering the Wind Project with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes, (B) assist Purchaser in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Rights, (C) coordinating with Purchaser on the submission to the CAISO of the monthly Supply Plan (as defined in the CAISO Tariff) submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Purchaser in connection with the Capacity Rights, Other Attributes and Resource Adequacy; provided, that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(d) Subject to Section 7.3 and at all times during the Term, Seller shall: (i) install such meters and power electronics as are necessary so that ancillary services and Capacity Rights or Other Attributes may be provided from the Wind Project by Purchaser, and (ii) comply with the Availability Standards to the extent such standards apply to Seller.

(e) If the Wind Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

## **2.11 Sales for Resale.**

All Energy delivered to Purchaser hereunder shall be sales for resale, with Purchaser reselling such Energy. Purchaser shall provide Seller with any documentation reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

## **2.12 *Operating Procedures.***

Seller and Purchaser will endeavor to develop written operating procedures (“Operating Procedures”), which Operating Procedures shall only be effective if made by mutual written agreement of Seller and Purchaser. The Parties agree that any Operating Procedures so established will set forth the protocol under which the Parties will perform their respective obligations under this Agreement and will include procedures concerning the following: (i) the method of day-to-day communications, (ii) key personnel lists for Seller and Purchaser; and (iii) forecasting, scheduling, curtailment and outage coordination.

## **ARTICLE 3 TERM, TERMINATION AND DEFAULTS**

### **3.1 *Term.***

The “Term” of this Agreement shall commence on the date hereof and continue until the date that is twenty (20) years after the Commercial Operation Date, unless sooner terminated in accordance with the terms hereof. The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal.

### **3.2 *Regulatory Approvals, Certifications, Qualifications.***

(a) Except as specifically provided for herein, each Party shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

(b) Seller represents that the Wind Project has received its CEC pre-Certification and Verification. Seller shall, at its sole expense and subject to Section 7.3, take all steps necessary to ensure during the Delivery Term that: (i) the Wind Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource and in that regard, Seller shall submit an application to the CEC for final CEC Certification and Verification within ten (10) Business Days after the Commencement Date, (ii) the Renewable Energy Credits transferred to Purchaser conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, and, (iii) that the Wind Project is maintained and operated in a manner so as to preserve such certification and qualification.

(c) Seller shall, at its sole expense, make any filings and submit any reports necessary for the Wind Project to maintain and comply with such CEC, ERR and California Renewables Portfolio Standard qualifications during the Delivery Term and shall promptly provide Purchaser with copies of any such filings or reports. Purchaser shall cooperate with Seller by providing promptly to Seller that data and information necessary, if any, in order for Seller to prepare and submit such filings and reports. In the event Seller fails to make such filings or submit such reports necessary to maintain such CEC, ERR and California Renewables Portfolio Standard qualifications (and such failure is not caused by Purchaser’s actions or inactions), Purchaser, on prior notice to Seller and at Seller’s expense, may take any and all actions deemed necessary by

Purchaser, on behalf of Seller and as Seller's agent, to maintain such CEC, ERR and California Renewables Portfolio Standard qualifications, including executing all necessary California regulatory agency documentation in order to accomplish the foregoing.

(d) To the extent the Wind Project is eligible to participate in the PIRP prior to the Commercial Operation Date, Seller shall, at its sole cost, promptly undertake such actions as may be necessary to ensure the Wind Project participates in PIRP at the earliest date possible. Seller shall provide Purchaser immediate oral notice of its receipt from CAISO of any notice or certification from CAISO regarding the Wind Project's participation in PIRP, and shall provide Seller with a written copy of the notice from CAISO certifying the Wind Project as eligible to participate in the PIRP within one (1) Business Day of Seller's receipt of such notice of PIRP certification. Subject to Section 7.3 and during, at all times following PIRP certification, Seller shall, at its sole cost, participate in and comply with PIRP as directed by Purchaser or any Purchaser's SC and shall comply with all additional protocols issued by the CAISO relating to PIRP resources during all hours of the Delivery Term. Purchaser as Scheduling Coordinator (or Purchaser's SC) shall facilitate communication between Seller and CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with PIRP and any additional protocols. Subject to Section 7.3, Seller shall, at its own expense, comply with, and satisfy the certification requirements of, EIRP and PIRP and with any additional protocols issued by the CAISO relating to Participating Intermittent Resource Programs. Ongoing costs for scheduling Energy during the Delivery Term shall be for the account of Purchaser.

(e) Throughout the Term, Seller shall, at its sole cost, to the extent required by NERC, WECC or FERC, cause the Wind Project Operator to register with NERC as the Generator Operator of the Wind Project and in which case Seller shall: (i) cause the Wind Project Operator to be responsible for complying with all NERC Reliability Standards applicable to a Generator Operator; and, (ii) be liable for all penalties assessed by NERC, FERC or WECC for violations of the NERC Reliability Standards applicable to a Generator Operator.

(f) Notwithstanding any provision of this Agreement, Seller acknowledges that Purchaser has no obligation to register with NERC as a Generator Operator or any other applicable NERC registration category with respect to the Wind Project, as a result of this Agreement, or to comply with any NERC Reliability Standards or requirements thereunder applicable to the Wind Project.

### **3.3 *Early Termination.***

(a) This Agreement may be terminated prior to the expiration of the Term as follows:

(i) by Seller in the event that Seller has not obtained the necessary environmental approvals, permits, licenses and other governmental approvals necessary to construct and operate the Wind Project in the manner contemplated by this Agreement which are final and no longer subject to appeal or legal challenge, on or before December 31, 2017, *provided* that Seller gives Purchaser written notice of such termination within fifteen (15) Days after such date;

(ii) by Seller in the event that all approvals of Seller's management and board of directors (or equivalent governing body) required for the performance of this Agreement have not been granted on or before June 30, 2016, *provided* that Seller gives Purchaser written notice of such termination within fifteen (15) Days after such date; and

(iii) by Purchaser in the event that all approvals of Purchaser's management and board of directors (or equivalent governing body) required for the performance of this Agreement have not been granted on or before June 30, 2016, *provided* that Purchaser gives Seller written notice of such termination within fifteen (15) Days after such date.

(b) Notwithstanding any provision of this Agreement to the contrary, in the event of termination pursuant to this Section 3.3, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination, *provided* that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or any indemnity obligations under Article 6 or the provisions of Section 8.1, which provisions shall survive any termination of this Agreement.

### **3.4 Defaults and Remedies.**

(a) Each of the following shall constitute an "Event of Default" hereunder:

(i) a failure by a Party to pay any amount due hereunder, where such failure is not cured within ten (10) Days after written notice from the other Party of such failure to pay;

(ii) during the Delivery Term, Seller sells Product from the Wind Project to a Person other than Purchaser, or if at any time during the Delivery Term, Seller delivers, or attempts to schedule or deliver, to the Delivery Point Product that was not generated by or attributable to the Wind Project, provided that it shall not be an Event of Default pursuant to this Section 3.4(a)(ii), if any Product that is supposed to be sold to Purchaser is sold or delivered to a third party, and such sale or delivery is not attributable to the acts or omissions of Seller or its Affiliates;

(iii) any representation or warranty made by such Party herein is false or incorrect in any material respect and has a material adverse effect on the non-defaulting Party, and the non-defaulting Party provides to other Party notice of the same if: (A) such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after notice is received by the defaulting Party; or (B) such inaccuracy is not capable of being remedied, but the non-defaulting Party's damages resulting from such inaccuracy can be reasonably ascertained, then if payment of such damages is not made within ten (10) Business Days after a notice of such damages is provided by the non-defaulting Party to the defaulting Party;

(iv) a default in performance or observance by Purchaser or Seller of any agreement, undertaking, covenant or other obligation contained in Section 3.6 and such default is not cured within ten (10) Business Days after notice from the non-defaulting Party;

(v) either Party has (a) filed or otherwise commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession

by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) failed, or admitted in writing its inability generally, to pay its debts as such debts become due, (c) made a general assignment for the benefit of creditors, which excludes collateral assignment to Lenders pursuant to Section 8.2(b)(i), (d) been adjudicated bankrupt or has filed a petition or an answer seeking an arrangement with creditors, (e) taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (f) become subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive Days, (g) failed to remove or stay an involuntary petition in bankruptcy filed against it within sixty (60) Days of the filing thereof, or (h) become subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301;

(vi) subject to Section 7.3, if Seller fails to maintain the Wind Project's Certification and Verification or the Wind Project fails to qualify as an ERR and Energy from the Wind Project sold to Purchaser fails to qualify as eligible renewable Energy for purposes of the California Renewables Portfolio Standard and such failure is not cured within ten (10) Business Days after notice; provided, Seller shall not be "in default" under this clause (vi) in the event such failure was caused by an action or inaction of Purchaser;

(vii) Seller, Seller's Affiliate or a third party installs generating capacity, other than that associated with the Wind Project and the Turbines, on the Site, or if Seller installs generating capacity in excess of the Maximum Wind Project Capacity and such excess generating capacity is not removed within five (5) Business Days (with respect to Seller's or Seller's Affiliate's generating capacity) or thirty (30) Days (with respect to a third party's generating capacity) after notice from Purchaser;

(viii) Reserved;

(ix) subject to Section 8.2, a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of that Party under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; or

(x) any other default in performance or observance by Purchaser or Seller of any agreement, undertaking, covenant or other obligation contained in this Agreement that has a material adverse effect on the non-defaulting Party if such default has not been cured by the defaulting Party within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default and its impact on the non-defaulting Party; provided, however, that, in the case of any such default that is not reasonably capable of being cured within the thirty (30) Day cure period, the defaulting Party shall have up to an additional sixty (60) Days if it commences to cure the default within such initial thirty (30) Day cure period and it diligently and continuously pursues such cure.

(b) Upon the occurrence of, and during the continuation of, an Event of Default by a Party, the non-defaulting Party shall have the right:

(i) subject to Section 8.8, to pursue all remedies given under this Agreement or now or hereafter existing at law, in equity or otherwise;

(ii) to suspend performance of its non-payment obligations and duties hereunder immediately upon delivering written notice to the defaulting Party of its intent to exercise its suspension rights; and

(iii) to terminate this Agreement by notice to the other Party, designating a Day no less than thirty (30) Days after such notice, as an early termination date (the “Early Termination Date”) to accelerate all amounts then owing between the Parties and to liquidate and terminate this Agreement.

(c) Termination Payment.

(i) As soon as practicable after the declaration of an Early Termination Date, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Termination Payment. The non-defaulting Party shall calculate the Termination Payment in a commercially reasonable manner as of the Early Termination Date. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment, if any, shall be made by the Party owing the Termination Payment within five (5) Business Days after such notice is effective and shall bear interest at the Prime Rate from the due date until paid.

(ii) “Termination Payment” means (a) all Gains incurred by the non-defaulting Party as a result of the termination of this Agreement, plus all other amounts due to the defaulting Party under this Agreement, minus (b) all Losses and Costs incurred by the non-defaulting Party as a result of the termination of this Agreement, plus all other amounts due from the defaulting Party under this Agreement, so that all such amounts shall be netted to a single liquidated amount payable by one Party to the other Party; provided, if the non-defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

(iii) If the defaulting party disputes the non-defaulting Party’s calculation of the Termination Payment, in whole or in part, the defaulting party shall, within ten (10) Business Days of receipt of the non-defaulting Party’s calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Section 8.15. Notwithstanding any provision of this Agreement, Purchaser and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party’s non-performance of this Agreement, including with respect to termination of this Agreement.

**3.5 *Specific Performance and Injunctive Relief.***

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

### **3.6 Financial Support Obligations.**

(a) Seller shall provide to Purchaser as security for the performance of Seller's obligations hereunder prior to Commencement Date, either (a) a Letter of Credit from a Qualified Institution; (b) a guaranty [REDACTED] ("Seller Guarantor"), in the form attached hereto as **Exhibit F** (a "Seller Guaranty"); or (c) a cash deposit, in either case in an amount [REDACTED]. Purchaser shall have the right to draw upon the Development Security, at Purchaser's sole discretion, in the event Seller fails to make any payments due and owing under this Agreement (including, when due and owing under this Agreement, any reimbursement to Purchaser for costs or damages, including Daily Delay Damages, that Purchaser has incurred as a result of Seller's failure to perform its obligations under this Agreement prior to the Commercial Operation Date). In no event shall Seller be obligated to replenish the Development Security. Seller shall post the Development Security by ten (10) Business Days after the Effective Date. In the event that no amounts are due and owing by Seller to Purchaser under this Agreement and Seller has provided the Operating Security to Purchaser, the Development Security shall be released to Seller upon the earlier of (i) termination of this Agreement in accordance with its terms; and (ii) on the tenth (10th) Business Day after the Commencement Date. Upon the consent of Purchaser, Seller may apply and maintain the Development Security as a portion of Operating Security required to be provided by Seller pursuant to Section 3.6(b).

(b) As a condition of Purchaser's continuing obligation under this Agreement, Seller shall provide to Purchaser as security for the performance of Seller's obligations hereunder after the Commencement Date, either (a) a Letter of Credit from a Qualified Institution; (b) a Seller Guaranty from Seller Guarantor; (c) a cash deposit; in either case, in an amount [REDACTED] during the period from the Commencement Date through and including January 14, 2027, and [REDACTED], thereafter until the end of the Term (the "Operating Security"). Purchaser shall have the right to draw upon the Operating Security, at Purchaser's sole discretion, in the event Seller fails to make any payments owing under this Agreement or to reimburse Purchaser for costs or damages that Purchaser has incurred as a result of Seller's failure to perform under this Agreement. In no event shall Seller be obligated to replenish the Operating Security. The Operating Security shall be posted no later than ten (10) Business Days after the Commercial Operation Date. In the event that no amounts are due and owing by Seller to Purchaser under this Agreement, the Operating Security shall be released to Seller upon the earlier of (i) termination of this Agreement in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

(c) Within ten (10) Business Days after the Effective Date, Purchaser shall provide Seller, and maintain thereafter throughout the remainder of the Term, security for Purchaser's obligations under this Agreement, which shall consist of either (a) a Letter of Credit from a

Qualified Institution; or (b) a cash deposit, in either case in an amount [REDACTED] provided, however, that for so long as the Credit Rating of Purchaser is Investment Grade during the Term, Purchaser may elect not to provide the security required by Section 3.6(c) and Purchaser's obligation to provide such security will be suspended. Within ten (10) Business Days of Seller's receipt of notice from Purchaser pursuant to this Section 3.6(c), Seller shall return to Purchaser the Purchaser Collateral, less any amounts drawn thereon.

(d) If at any time there shall occur a Downgrade Event with respect to Seller Guarantor or if a Downgrade Event with respect Purchaser shall occur after Purchaser has obtained an Investment Grade Rating and elected to not provide the Purchaser Collateral, then Seller or Purchaser, as applicable, may require the other Party to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of the Seller Guaranty or the Purchaser Collateral, as applicable. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Any Letter of Credit issued pursuant to this Section 3.6(d) shall be subject to all terms and conditions of this Agreement otherwise applicable to the Seller Guaranty and the Purchaser Collateral. In the event Purchaser or Seller, as applicable, shall fail to provide such security within ten (10) Business Days of receipt of written notice, then a material breach of this Agreement shall be deemed to have occurred; provided, however, that Purchaser's or Seller's, as applicable, obligation to provide a Letter of Credit under Section 3.6(d) shall be suspended during the period that Seller Guarantor or Purchaser is no longer experiencing a Downgrade Event and the security provided by Purchaser or Seller, as applicable, prior to such Downgrade Event is reinstated.

(e) With respect to any Letter of Credit posted hereunder: (i) on or before the date that is thirty (30) days prior to the expiration date of any letter of credit, Seller or Purchaser, as applicable, shall cause the Letter of Credit to be renewed or replaced with another Letter of Credit in an equal amount; and (ii) Purchaser or Seller, as applicable, shall have the right to draw on such Letter of Credit, at such Party's sole discretion (A) if such Letter of Credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (B) if the issuer is no longer a Qualified Institution and Seller or Purchaser, as applicable, has not caused a replacement Letter of Credit to be issued for the benefit of the other Party within ten (10) Business Days of such issuer no longer qualifying as a Qualified Institution, provided that if such Party draws upon any Letter of Credit for the foregoing reason and the other Party subsequently posts a replacement Letter of Credit or extends or renews such Letter of Credit (in the case of (A) above), the proceeds of such drawing shall be returned to such other Party.

## **ARTICLE 4 BILLING AND PAYMENT; METERING AND MEASUREMENT**

### **4.1 *Billing and Payment.***

Billing and payment for Product sold to and purchased by Purchaser under this Agreement and any other amounts due and payable hereunder, including payments for Available Energy as provided herein shall be as follows:

(a) Commencing on the Effective Date and continuing throughout the remainder of the Term, Seller shall calculate: (i) the amount of Energy delivered to Purchaser at the Delivery Point

during the Delivery Term from recordings produced by the Meter(s) for the Wind Project on or near the last Day of each calendar month and on the last Day of the final Contract Year; and (ii) other amounts due one Party by the other Party hereunder. No later than the tenth (10<sup>th</sup>) Day of each calendar month: (i) Seller shall deliver to Purchaser an invoice showing the amount of Energy delivered to Purchaser by Seller at the Delivery Point during the preceding calendar month of the Delivery Term (or in the case of the final Contract Year, the last calendar month or portion thereof of the Term), Seller's computation of the amount due Seller in respect thereof, and any other amounts owed, including payments for Available Energy, by one Party to the other Party pursuant to this Agreement. By the later of either the twentieth (20<sup>th</sup>) calendar day of the month or ten (10) Days after receipt of each invoice (unless such Day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day), Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the undisputed amount of such invoice. To the extent Seller owes Purchaser any undisputed amounts hereunder, including MAP Damages payable to Purchaser pursuant to Section 5.5, Purchaser may set-off such amounts from Purchaser's payments to Seller. Seller shall cooperate reasonably with any Purchaser request to modify the format, or level of detail, of Seller invoices pursuant to this Agreement.

(b) Except as provided in Section 4.1(e), within one (1) year after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error therein and the Parties shall meet, by telephone conference call or otherwise within ten (10) Business Days of the other Party's receipt of such notice, for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, then either Party may proceed to seek any remedy that may be available to such Party at law or in equity.

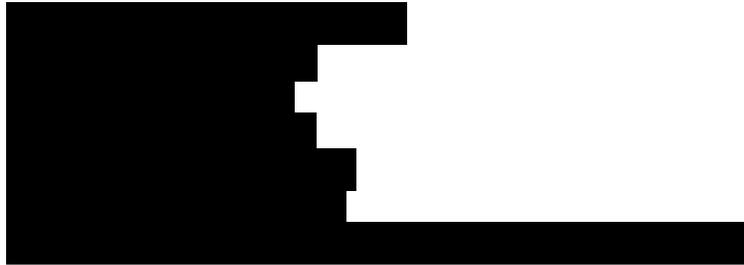
(c) Except as otherwise provided in this Agreement, all payments hereunder shall be made without set-off or deduction. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate [REDACTED] but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law ("Late Payment Rate"). If, as a result of a dispute settled in favor of Purchaser, a refund is owed to Purchaser, then the amount of the overpayment shall bear interest from the date on which such payment was made by Purchaser through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(d) Statements or invoices shall be sent to Purchaser by mail, facsimile, or E-mail to:

Sonoma Clean Power Authority  
50 Santa Rosa Avenue, 5<sup>th</sup> Floor  
Santa Rosa, CA 95404  
Attn: Stephanie Reynolds  
Telephone: (707) 978-3467  
Facsimile: (707) 978-3471

E-mail: sreynolds@sonomacleanpower.org

Statements or invoices shall be sent to Seller by mail or facsimile to:



Either Party may change the address or facsimile number by providing written notice to the other Party.

(e) If Seller or Purchaser determines that a calculation of delivered Product or CAISO Penalties is incorrect as a result of inaccurate Meters, the correction of data by the CAISO in OMAR, or a recalculation of CAISO Penalties or other amounts owing between the Parties, Seller or Purchaser, as the case may be, shall promptly recompute the delivered Product, CAISO Penalties or other amounts for the period of the inaccuracy based upon an adjustment of inaccurate meter readings, correction of data or recalculation of CAISO Penalties in accordance with the CAISO Tariff and any payment affected by the adjustment or correction. Any amount due from Purchaser to Seller, or Seller to Purchaser, as the case may be, will be made as an adjustment to the next monthly payment statement that is calculated after Seller's or Purchaser's recomputation using corrected measurements. If the recomputation results in a net amount owed to Purchaser after applying any amounts owing to Seller as shown on the next monthly payment statement, any such amount owing to Purchaser will at Purchaser's discretion be netted against amounts owed to Seller in any subsequent monthly payment invoice or separately invoiced to Seller, in which case Seller must pay the amount owing to Purchaser within twenty (20) days after receipt of that invoice. Purchaser or Seller may make payment adjustments arising from a recalculation of CAISO Penalties or as a result of inaccurate Meters after the end of a Contract Year. Adjustment payments for Meter inaccuracy will not bear interest.

#### **4.2 Metering Equipment.**

(a) Seller shall: (i) provide and maintain, at its cost, Meters and associated measuring and recording equipment necessary to meet all applicable WREGIS and CAISO requirements and to further permit an accurate determination of the quantities of Energy delivered under this Agreement; (ii) ensure that Meters and any Back Up Meters, shall be adjusted to reflect Seller's deliveries of Energy at the Delivery Point; and, (iii) exercise reasonable care in the maintenance and operation of any such Meters and equipment so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of the Energy delivered to Purchaser at the Delivery Point under this Agreement.

(b) All Energy from the Wind Project must be delivered through Meters, or Back-Up Meters, as applicable. All Energy purchased under this Agreement must be measured by the Meters or Back-Up Meters to be eligible for payment under this Agreement. Seller shall bear all

costs relating to all metering equipment installed to accommodate the Wind Project, except for Back-Up Meters installed at the direction of Purchaser, which costs to purchase, install and maintain such Back-Up Meters will be borne by Purchaser. Seller hereby agrees to provide all meter data to Purchaser in a form reasonably acceptable to Purchaser, and consents to Purchaser obtaining from the CAISO the CAISO meter data applicable to the Wind Project and all related inspection, testing and calibration data and reports. Seller shall grant Purchaser the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the Meters at the Site; provided, any such access to the Site be in a manner consistent with the access provisions of Section 5.6. If CAISO adjusts any CAISO meter data related to a specific time period, Seller agrees that it shall, pursuant to Section 4.1(e), submit revised monthly invoices related to such time period in order to reconcile past invoices to conform fully with such CAISO meter data adjustments. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which it receives from CAISO such binding adjustment to the meter data.

(c) Seller shall test and calibrate the Meters, as necessary, but in no event will the period between testing and calibration dates be greater than twelve (12) months. Seller shall bear its own costs for any meter check or recertification of the Meters; provided, Purchaser shall reimburse Seller the costs associated with a meter check or recertification of a Back-up Meter installed at the direction of Purchaser. Seller shall replace the Meter and Back-Up Meter batteries at least once every thirty-six (36) months or such shorter period as may be recommended by the Meter or Back-Up Meter manufacturer. Notwithstanding the foregoing, if the Meter or Back-Up Meter battery fails, Seller shall replace such battery within one (1) day after becoming aware of its failure. Seller shall use certified test and calibration technicians to perform any work associated with the Meter and Back-Up Meter, and Seller shall provide Purchaser certified results of tests and calibrations within thirty (30) days after completion.

(d) Purchaser may request, at Purchaser's sole cost and expense, that Seller furnish and install one or more Back-Up Meters at or near the Delivery Point. All Back-Up Meters shall be CAISO approved and the readings from each Back-Up Meter shall be adjusted to reflect Seller's actual Energy deliveries to Purchaser at the Delivery Point.

(e) All of the Meters and Back-Up Meters will be locked or sealed, and the lock or seal will be broken, only for purposes of testing, calibration or adjustment. If any Meter, or Back-Up Meter is found to be defective or inaccurate, it shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Seller at the expense of the Party owning such defective or inaccurate device. Each Party grants the other Party the right to request additional tests of such Party's metering devices (with reasonable prior notice and at reasonable time) in order verify the accuracy of such Party's Meters' measurements and recordings and the Party owning the metering device shall perform such additional tests; provided, such inspections and verifications shall be at the requesting Party's sole expense and shall not occur more than two (2) times each Contract Year during the Term; provided that if a test of a metering device determines that the metering device is inaccurate by more than one half percent (.5%), the Party owning the metering device shall pay for such test and such test will not count towards the two test per Contract Year limit described above.

(f) If a Meter, or a Back-Up Meter fails to register, or if the measurement made by a Meter, or a Back-Up Meter, is found upon testing to be inaccurate by more than one half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Meter, or Back-Up Meter, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(i) In the event that a Meter is found to be defective or inaccurate, the Parties shall use readings from a Back-Up Meter, if installed, to determine the amount of such inaccuracy; provided, however, that such Back-Up Meter has been tested and maintained in accordance with the provisions of this Agreement. If there is no Back-Up Meter, or such Back-Up Meter is also found to be inaccurate by more than one half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Energy from the Wind Project to the Delivery Point during periods of similar operating conditions when the Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(ii) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shortest of (A) the last one-half of the period from the last previous test of the Meter to the test that found the Meter to be defective or inaccurate, (B) the last one-half of the period from the last previous test of the Back-Up Meter to the test that found the Back-Up Meter to be defective or inaccurate, or (C) the one hundred eighty (180) days.

(g) Notwithstanding any provisions set forth in this Section 4.2, to the extent there is an inconsistency between this Agreement and the provisions of the CAISO Tariff or Metering Services Agreement, the CAISO Tariff or Metering Services Agreement shall control.

#### **4.3 *Maintenance and Records.***

Seller shall provide Purchaser reports indicating Seller's daily delivery of Energy to the Delivery Point and other information reasonably requested by Purchaser. Seller shall provide reports on a frequency, and in a format, as reasonably requested by Purchaser. Purchaser shall have the right to be present whenever Seller reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Meters, Back-Up Meters, or any of Seller's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Delivery Point; provided, any such access to the Site be in a manner consistent with the access provisions of Section 5.6. Seller shall give at least two (2) Business Days' notice to Purchaser in advance of taking any such actions. The records from the measuring equipment shall remain the property of Seller, but, upon request, Seller shall submit to Purchaser its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Seller agrees to retain such records for a period no less than two (2) years.

#### **4.4 *Electronic Communications.***

Seller shall provide Purchaser, at Seller's sole expense, the instantaneous net MW flow updated every minute via file transfer protocol which represents the quasi real time electronic meter data

from the Wind Project. Seller shall use commercially reasonable efforts to transmit to Purchaser, on a real time basis, any other operational data from the Wind Project that Seller receives or possesses, including wind speed, direction and density data. Seller, at its own expense, shall: (a) install and maintain at least one (1) stand-alone meteorological station (the “Meteorological Station”) at the Site to monitor and report the meteorological data specified in this Section 4.4; (b) install and maintain additional Meteorological Stations at the Site, if any, required for the Seller to receive a final certification from CAISO that the Wind Project is eligible to participate in the Participating Intermittent Resource Program or as may be required pursuant to the CAISO Tariff; (c) provide such real time data to Purchaser on the same basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Purchaser shall also receive the data in four second intervals); and, (d) install a dedicated direct communication circuit (which may be by common carrier telephone) between Purchaser and the control center in the Wind Project’s control room or such other communication equipment as the Parties may agree.

#### **4.5 *Environmental Contamination.***

Seller shall disclose in writing to Purchaser, the extent of, and as soon as it is known to Seller, any violation of any environmental laws or regulations arising out of the construction or operation of the Wind Project, or the presence of Environmental Contamination at the Wind Project or on the Site, alleged to exist by any Person, or Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

**ARTICLE 5**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**5.1 *Seller's Representations and Warranties.***

- (a) Seller represents and warrants as follows:
- (i) Seller is a limited partnership, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and authorized to conduct business in the State of California;
  - (ii) 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;
  - (iii) Seller has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;
  - (iv) the execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the 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 or require any consent, license or approval, and approval by its board of directors (or equivalent governing body) that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Seller or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;
  - (v) Seller has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;
  - (vi) there are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Seller, or to its knowledge threatened against Seller;
  - (vii) there are no actions or proceedings pending or, to Seller's knowledge, threatened, and there are no judgments, rulings or orders issued by any court or other Governmental Authority, that would materially adversely affect Seller's ability to perform its obligations under this Agreement;
  - (viii) 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 creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity;

(ix) all upgrades required under the Interconnection Agreements have been made, or will have been made prior to the commencement of the Delivery Term;

(x) Seller has procured or will procure prior to the commencement of the Delivery Term all easements or leases of real property required for the operation of the Wind Project at the Site and the performance of any obligations of Seller hereunder, and the terms of each are for periods of no less than the Term.

## **5.2 Purchaser's Representations and Warranties.**

(a) Purchaser represents and warrants as follows:

(i) Purchaser is a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) and as such is duly organized, validly existing and in good standing under the laws of the State of California and authorized to conduct business in California;

(ii) Purchaser 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;

(iii) Purchaser has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) the execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Purchaser with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Purchaser or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Purchaser is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Purchaser has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) there are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Purchaser, or to its knowledge threatened against Purchaser;

(vii) there are no actions or proceedings, pending or to Purchaser's knowledge, threatened, and there are no judgments, rulings or orders issued by any court or other governmental body that would materially adversely affect Purchaser's ability to perform its obligations under this Agreement; and

(viii) this Agreement is a legal, valid and binding obligation of Purchaser enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

### **5.3 *Seller's Covenants.***

(a) Seller covenants that:

(i) at all times during the Term, the Wind Project shall be operated and maintained in accordance with this Agreement, Prudent Operating Practices and, subject to Section 7.3, Applicable Laws;

(ii) from the date hereof through the expiration or termination of this Agreement, Seller shall comply with this Agreement and, subject to Section 7.3, the CAISO Tariff and Applicable Laws;

(iii) except for assignments authorized in accordance with Section 8.2, Seller shall at all times own and operate (or cause its Affiliate to operate) the Wind Project;

(iv) it shall obtain, maintain and remain in compliance with all Permits (subject to Section 7.3), the Interconnection Agreements, and transmission and distribution rights necessary to operate the Wind Project and to deliver Product to Purchaser, including Energy from the Wind Project to the Delivery Point;

(v) it shall maintain all easements or leases of real property required for the operation of the Wind Project at the Site and the performance of any obligations of Seller hereunder;

(vi) it shall cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable California statutes and regulations affecting job safety, provided that Seller's failure to comply with the requirements of this Section 5.3 shall not provide Purchaser with the right to terminate this Agreement; and

(vii) except as specifically provided herein, it will throughout the Delivery Term provide and convey all Green Attributes and Other Attributes associated with the Energy generated from the Wind Project to Purchaser as part of the Energy being delivered to Purchaser. Seller shall hold the rights to all Product from the Wind Project, and Seller agrees to convey and hereby conveys all such Product associated with the Energy to Purchaser as included in the delivery of the Energy from the Wind Project to Purchaser.

### **5.4 *Purchaser's Covenants.***

(a) Purchaser covenants that:

(i) From the date hereof through the expiration or termination of this Agreement, Purchaser shall comply with this Agreement and Applicable Laws;

(ii) During the Delivery Term, Purchaser shall perform, or cause Purchaser's SC to perform, all scheduling in compliance with the CAISO Tariff and Applicable Laws;

(iii) it shall obtain, maintain and remain in compliance with any transmission rights necessary to receive Energy from the Wind Project at the Delivery Point;

(iv) it shall maintain a Revenue Maintenance Requirement of [REDACTED] during the period commencing on July 1, 2016 through June 30, 2017, and [REDACTED] thereafter; and

(v) it shall maintain during the Delivery Term a Debt Service Coverage Ratio of [REDACTED]

### **5.5 Mechanical Availability Percentage.**

(a) Commencing on: (i) the first anniversary of the Commencement Date and for the first two (2) Contract Years, the Wind Project shall achieve a Mechanical Availability Percentage [REDACTED] and (ii) the first day of the third Contract Year and thereafter until the termination of this Agreement, the Wind Project shall achieve a Mechanical Availability Percentage [REDACTED] calculated in accordance with **Exhibit D** [REDACTED]

(b) In the event that the Mechanical Availability Percentage falls below the Guaranteed Mechanical Availability Percentage [REDACTED]

(c) On the first anniversary of the Commencement Date, Seller shall calculate the Mechanical Availability Percentage for such year, and at the end of each month thereafter during the Delivery Term, Seller shall calculate the Mechanical Availability Percentage for such month, in each case, in accordance with this Section 5.5(c) and **Exhibit D**.

(d) Seller's monthly invoices to Purchaser provided pursuant to Section 4.1(a) shall include a calculation of Mechanical Availability Percentage for such month and a calculation of MAP Damages due Purchaser, if any, for such month. Any MAP Damages shall be calculated in accordance with **Exhibit D**. Any MAP Damages due and payable by Seller shall be set off against monthly billings for Energy.

(e) MAP Damages shall be Purchaser's sole and exclusive remedy for Seller's failure to achieve the Guaranteed Mechanical Availability Percentage. In no event shall Seller's aggregate liability for MAP Damages [REDACTED]

### **5.6 Access Rights.**

Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Applicable Law relating to workplace health and safety, Seller shall provide Purchaser and its

authorized agents, employees, contractors and inspectors with reasonable access to the Wind Project: (a) for the purpose of reading or testing metering equipment; and, (b) for other reasonable purposes at the reasonable request of Purchaser; provided, such access shall take place during normal business hours and Purchaser shall observe all applicable safety rules made known to Purchaser's employees, contractors and authorized agents and shall indemnify Seller for the actions of its employees, contractors and authorized agents for harm or liabilities caused by Purchaser, its employees, contractors or authorized agents during such Site visits. Purchaser shall release Seller against and from any and all liabilities resulting from actions or omissions in connection with Purchaser's visits to the Site, except to the extent that such damages are caused or exacerbated by the intentional or negligent act or omission of Seller or Seller's contractors.

### **5.7 *Wind Project Images.***

Purchaser shall not, without the prior consent of Seller (such consent not unreasonably withheld, conditioned or delayed) use any images from or of the Wind Project for promotional purposes.

## **ARTICLE 6 INDEMNIFICATION AND INSURANCE**

### **6.1 *Indemnity.***

(a) Subject to Section 8.8 (waiver of certain damages):

(i) each Party hereby protects, defends, indemnifies and holds harmless on an After-Tax Basis, the other Party, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from property damage, bodily injuries or death suffered by any Person (including, without limitation, employees of Purchaser or Seller) related to, arising from, or connected to the representations, covenants or other obligations of the indemnifying party hereunder;

(ii) Seller shall defend, indemnify and hold harmless, on an After-Tax Basis, Purchaser, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from Environmental Contamination (including claims brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act), interference with, death or injury to birds or bats, or other injury or damage to flora, fauna or the environment, including any mitigation efforts requested or required by any Governmental Authority;

(iii) Seller shall defend, indemnify and hold harmless, on an After-Tax Basis, Purchaser, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from NERC standards non-compliance penalties or an attempt by any Governmental Authority, person or entity to assess such NERC standards non-compliance penalties against Purchaser, except to the extent due to Purchaser's negligence in performing its role as Scheduling Coordinator throughout the Term; and

(iv) Seller shall defend, indemnify and hold harmless, on an After-Tax Basis, Purchaser, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities, costs and expenses (including reasonable attorney's fees) arising from Seller's sales of Energy or Product prior to the commencement of the Delivery Term.

(b) The indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that an act or omission of the indemnitee may have contributed to the loss, injury, property damage, charges, fees or liability. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its sole negligence, fraud or willful misconduct. The indemnitor, upon the other Party's request, shall defend any suit asserting a claim covered by this indemnity and shall pay all costs, subject to the proportionality standard set forth above in the event of the indemnitee's contributory negligence, including reasonable legal fees, that may be incurred by the other Party in enforcing this indemnity; provided, that the indemnitor shall be entitled, at its option, to assume and control the defense with reasonable input from the indemnitee and any settlement of such suit shall first be submitted to the indemnitee for prior approval. If indemnitee fails to approve a settlement proposed by indemnitor, indemnitor may settle such claim on its behalf only, without relinquishing any rights of indemnitee. If the indemnitee fails to approve any such settlement, indemnitor's liability to the indemnitee will be capped at a level equal to the proposed settlement amount, plus attorney fees and expenses incurred by the indemnitee prior to the indemnitee's rejection of the proposed settlement. Each indemnity set forth in this Section 6.1 is a continuing obligation, separate and independent of the other obligations of each Party and survives the expiration or termination hereof. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

## **6.2 Insurance.**

(a) Seller, at its own cost and expense, shall maintain and keep in full force and effect from the date ninety (90) days after the Effective Date through the later of the date of expiration or termination of the Agreement, the following insurance coverage (collectively, the "Insurance Obligations"):

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with [REDACTED]

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with [REDACTED]

(iii) Business Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of [REDACTED]

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;

(iv) Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, and Business Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of [REDACTED]

[REDACTED] The insurance requirements of this Section 6.2 can be provided by any combination of Seller’s primary and excess liability policies; and

(v) Such insurance against loss or damage as is prudently carried by businesses operating facilities in the nature of the Wind Project.

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date ninety (90) days after the Effective Date through the expiration or termination of the Agreement. All insurance coverage, required by this Agreement, other than self-insurance, shall be issued by an insurer with an A.M. Best’s rating of not less than “A-” or such other insurer as is reasonably acceptable to both Parties. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller’s defense and indemnity obligations.

(c) All insurance policies shall include provisions or endorsements stating any cancellation or non-renewal of the insurance required by this Section 6.2 without thirty days (30) prior written notice and cancellation for non-payment of premium shall be effective at least ten (10) Days after the insurer provides notice of such cancellation to Purchaser.

(d) The insurance required above shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Purchaser, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Purchaser, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Purchaser, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller’s construction, ownership or operation of the Wind Project.

(e) Within three (3) Business Days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Purchaser certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Purchaser. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. Purchaser’s receipt of certificates that do not comply with the requirements stated herein, or Seller’s failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 6.2 and shall not constitute a waiver of any of the requirements in this Section 6.2.

(f) Self-Insurance.

(i) Seller may self-insure the Insurance Obligations to the extent Seller or an Affiliate of Seller (as applicable, the “Self-Insurer”), maintains a self-insurance program under which Seller is insured; provided that, the Self-Insurer’s Credit Rating is rated at Investment Grade, or better, by S&P. Seller shall provide Purchaser with no less than one hundred twenty (120) days prior written notice of its intent to self-insure the Insurance Obligations.

(ii) For any period of time that the Self-Insurer is unrated by S&P or the Self-Insurer’s Credit Rating is rated at less than Investment Grade by S&P, Seller shall comply with the insurance obligations applicable to it under this Section 6.2.

(iii) In the event that Seller self-insures in accordance with this Section 6.2(f), it shall not be required to comply with the insurance requirements set forth in Sections 6.2(a)-6.2(e).

(iv) The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller’s defense and indemnity obligations.

(v) Seller shall furnish to Purchaser a letter of self-insurance in the event that Seller intends to self-insure in accordance with this Section 6.2(f). Seller’s failure to provide the letter of self-insurance shall not limit or relieve Seller of the duties and responsibility of maintaining insurance or self-insurance in compliance with the requirements in this Section 6.2 and shall not constitute a waiver of any of the requirements in this Section 6.2 by Purchaser.

## **ARTICLE 7 GOVERNMENT APPROVALS**

### **7.1 *Government Approvals - Seller’s Obligation.***

Seller shall secure and maintain, at no cost to Purchaser, all Permits (including environmental permits), easements, rights-of-way, releases and other approvals necessary for the construction, engineering, operation and maintenance of the Wind Project and the performance by Seller of its obligations hereunder.

### **7.2 *Government Approvals – Purchaser’s Obligation.***

Purchaser shall secure and maintain, at no cost to Seller, all government approvals, permits, licenses, easements, rights of way, releases and other approvals necessary for the performance by Purchaser of its obligations hereunder.

### **7.3 *Changes In Law.***

(a) Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard, and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to

Purchaser, including: (i) modification of the description of Green Attributes, Capacity Rights or Other Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Wind Project is eligible as an ERR and other benefits under the California Renewables Portfolio Standard; provided, Seller shall have no obligation to modify this Agreement, submit any reports, data, or other information or take other actions that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) Notwithstanding the foregoing, to the extent a change in law is enacted after execution of this Agreement that would require Seller to make capital improvements to the Wind Project in order for Seller to comply with the covenants set forth in Section 2.4(c) (WREGIS), Section 2.9(b)(i) and (iii) (Forecasting Procedures), Section 2.10(d) (Capacity Rights and Other Attributes), Section 3.2(b) (Eligible Renewable Energy Resource) and Section 3.2(d) (PIRP), Seller shall be deemed to comply with such change in law and the above-noted covenants if: (i) Seller takes all actions to comply with or implement any change or improvement to the Wind Project to satisfy such covenant ("Compliance Improvement"), and (ii) Seller incurs capital costs to comply with such changes in law during the Delivery Term that, in the aggregate during the Term, [REDACTED] ("Compliance Expenditure Maximum"). For clarification, once Seller exceeds the Compliance Expenditure Maximum to comply with changes of law as described in this Section 7.3(b), Seller shall not be required to make further capital improvements to comply with further such changes in law that affect the covenants described in this Section 7.3(b) unless Purchaser agrees to pay the amount set forth in the Compliance Improvement Amount Agreement pursuant to Section 7.3(b)(i). Commencing on that date six (6) months following the Commercial Operation Date and on a semi-annual basis thereafter for the Term, Seller will provide to Purchaser a report of the material Compliance Improvement capital costs incurred by Seller during such period. If after such change in law has occurred, Seller determines that it will exceed the Compliance Expenditure Maximum to implement the Compliance Improvement, Seller shall notify Purchaser and provide documentation and calculations to support the expected exceedance ("Compliance Improvement Notice"). Purchaser shall then have sixty (60) days after receipt of the Compliance Improvement Notice to verify or dispute Seller's documentation and calculation. The Parties shall then have thirty (30) days to agree in writing (such agreement not to be unreasonably withheld, conditioned or delayed) on the amount by which Seller will exceed the Compliance Expenditure Maximum in order to satisfy the Compliance Improvement ("Compliance Improvement Amount Agreement"). Purchaser may then:

(i) elect to pay Seller the amount set forth in the Compliance Improvement Amount Agreement and notify Seller of such election within ten (10) Business Days of the effective date of the Compliance Improvement Amount Agreement. If Purchaser so elects, Seller shall implement the Compliance Improvement; provided that Purchaser either directly and timely pays, or provides monies to Seller to allow Seller to timely pay, Purchaser's respective share of costs and expenses associated with the Compliance Improvement; or

(ii) elect not to pay Seller for the amount set forth in the Compliance Improvement Amount Agreement and notify Seller of such decision within ten (10) Business Days

of the effective date of the Compliance Improvement Amount Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further or additional Compliance Improvement.

## **ARTICLE 8 MISCELLANEOUS**

### **8.1 *Confidential Information.***

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Wind Project that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the “Confidential Information”); provided that in order for such information, processes, know-how, techniques and procedures to be considered “Confidential Information,” the Party disclosing such information must: (i) if disclosure is in writing or other tangible electronic storage medium, clearly mark such item as "Confidential" or "Proprietary" or (ii) if the disclosure is oral or visual, the disclosing Party must, within three (3) Business Days thereafter, follow up with a disclosure complying with the requirements of clause (i) above. Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the “Disclosing Party”) may make such Confidential Information available to the other (each, a “Receiving Party”) subject to the provisions of this Section 8.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by Applicable Law, subject to the restrictions set forth below;

(ii) restrict access to such Confidential Information to only those employees, subcontractors, suppliers, vendors, and advisors whose access is reasonably necessary for the development, construction, operation or maintenance of the Wind Project and for the purposes of the negotiation or implementation of this Agreement, who shall be bound by the terms of this Section 8.1;

(iii) use such Confidential Information solely for the purpose of developing the Wind Project and for purposes of this Agreement; and

(iv) upon the termination of this Agreement, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this Section 8.1 do not apply to:

(i) release of this Agreement to any Governmental Authority required for obtaining any approval or making any filing pursuant to Sections 3.2, 7.1 or 7.2; provided, that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party; provided, that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) information which is received from a third party which is not known (after due inquiry) by the Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including the California Public Records Act); provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Lenders and any other financial institutions expressing an interest in providing equity or debt financing or refinancing or credit support to Seller, and the agent or trustee of any of them. Any such disclosed information will be subject to the obligations concerning confidentiality set forth in this Agreement. Seller shall be responsible for any breach of this Section 8.1 by the Lenders or such other financial institutions.

(e) Notwithstanding the foregoing, Purchaser may disclose Confidential Information to WREGIS, CAISO or other Persons for purposes of ensuring Purchaser receives the benefit of, or credit for, Green Attributes, Capacity Rights and Other Attributes, and to downstream purchasers of Product; provided the form and content of such disclosure is subject to Seller's approval, which approval may not be unreasonably withheld, conditioned or delayed; and provided, further, that Purchaser may disclose without Seller's approval: (i) the Wind Project's name, location, interconnection characteristics, size, turbine type and quantity, monthly wind forecast and historical generation, expected Commercial Operation Date, and (ii) any Confidential Information necessary (A) to schedule Energy, (B) for the generation of an e-tag or successor mechanism, or (C) export Energy out of California to obtain the benefit of any commercial advantage provided to wind generators by state or federal legislation favoring renewable or non-carbon generation. Any such disclosed information will be subject to the obligations concerning confidentiality set forth in this Agreement.

(f) Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law, provided that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 8.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which

approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Wind Project or as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 8.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## **8.2 Successors and Assigns; Assignment.**

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

(b) This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, no consent shall be required for:

(i) any assignment of this Agreement by Seller to any Lenders providing debt financing, as collateral security for obligations under the debt financing documents entered into with such Lenders;

(ii) any assignment or transfer of this Agreement (A) by Seller to an Affiliate of equal or greater creditworthiness, provided that (I) there are no outstanding Events of Default with respect to which Seller is the defaulting Party and (II) the proposed assignee or transferee is not bankrupt, and (B) by Purchaser to an Affiliate of equal or greater creditworthiness, provided that (I) there are no outstanding Events of Default with respect to which Purchaser is the defaulting Party, (II) the proposed assignee or transferee is not bankrupt, and (III) such Affiliate is a public utility providing retail electric service pursuant to Applicable Law;

(iii) any assignment or transfer of this Agreement by a Party to a Person succeeding to all or substantially all of the assets of such Party; provided that there are no outstanding Events of Default and (A) the assignee satisfies the financial support obligations set forth in Section 3.6; provided, however, in the event the assignee has a Credit Rating below BBB- from S&P or Baa3 from Moody's then such financial support obligations must be provided in the form of a Letter(s) of Credit, (B) agrees in writing to be bound by and to assume the terms and conditions of this Agreement and any and all obligations arising or accruing thereunder from and after the date of such assumption, and (C) if the assigning Party is Seller, the assignee has demonstrable experience as (or has a long-term operating agreement with) an operator of other wind power electric generating facilities.

## **8.3 Financing Liens.**

(a) Seller, without approval of Purchaser, may, by security, charge or otherwise encumber its interest under this Agreement to a Lender providing debt for the purposes of financing the Wind Project and the Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

(d) If Seller encumbers its interest under this Agreement as permitted by this Section 8.3, upon the receipt of a written request from the Lender, Purchaser shall execute, at the Seller's expense, a consent to assignment in a form substantially similar to the Form of Consent to Assignment attached hereto as **Exhibit E**. Purchaser shall, upon a commercially reasonable request by Seller or a Lender and at Seller's sole expense, cooperate reasonably to execute, or arrange for the delivery of, within thirty (30) days of such request, those normal, reasonable and customary certificates, opinions and other documents (including estoppel certificates related to a tax equity financing) and to provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Purchaser including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof), as may be necessary to assist Seller in consummating any debt financing or refinancing of the Wind Project or any part thereof; provided, that in responding to any such request, Purchaser shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in a adverse effect on, any of Purchaser's rights, benefits, risks and/or obligations under this Agreement.

#### **8.4 Notices.**

Each notice, request, demand, statement or routine communication required or permitted under this Agreement, or any notice or communication that either Party may desire to deliver to the other, shall be in writing, and shall be considered delivered: (a) when received by the other Party if sent by certified U.S. mail or reputable overnight courier addressed to the other Party at its address indicated below; or (b) when electronic confirmation is received by the sending Party's facsimile machine if sent by facsimile addressed to the other Party at its facsimile number indicated below. Either Party may designate another address for itself in a written notice to the other Party in accordance with this Section 8.4.

If to Seller:



With copies of all notices relating to Events of Default, termination (see Section 3.4(b)(iii)) and other legal notices by overnight mail to:





If to Purchaser: Sonoma Clean Power Authority  
50 Santa Rosa Avenue, 5<sup>th</sup> Floor  
Santa Rosa, CA 95404  
Attention: Deb Emerson  
Telephone: (707) 978-3469 or (410) 615-0904  
Facsimile: (707) 978-3471

With a copy to:

Attention: Stephanie Reynolds  
Telephone: (707) 978-3467  
Facsimile: (707) 978-3471

With copies of all notices relating to Events of Default, termination (see Section 3.4(b)(iii)) and other legal notices by overnight mail to:

Attention: Stephanie Reynolds  
Telephone: (707) 978-3467  
Facsimile: (707) 978-3471

## **8.5 Force Majeure.**

(a) The performance of any obligation required hereunder shall be excused to the extent required by, and during the continuation of, any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended, as required to overcome the effects of such Force Majeure Event. The Party experiencing the delay or hindrance shall orally notify the other Party as soon as reasonably practicable following the Force Majeure Event, and shall notify the other Party in writing of the occurrence of such Force Majeure Event, including the extent and anticipated period of delay, within ten (10) Days after the commencement of the Force Majeure Event; provided, that the failure of the Party experiencing the delay or hindrance to notify the other Party within such ten (10) Day period shall preclude such Party from claiming a Force Majeure Event hereunder for any Days prior to its notice. For clarification by way of example, if a Party first notifies the other Party of a Force Majeure Event thirty (30) Days after the commencement of such event, the claiming Party will only have its performance excused by reason of such Force Majeure Event for periods after its notice (i.e., on and after day thirty (30)). Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure Event suffered by either of them and to resume performance hereunder as soon as practicable under the circumstances.

(b) In no event will any delay or failure of performance caused by any conditions or Force Majeure Event extend this Agreement beyond its stated Term.

#### **8.6 *Amendments.***

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

#### **8.7 *Waivers.***

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **8.8 *Waiver of Certain Damages.***

(a) Notwithstanding any other provision of this Agreement, except to the extent indemnification payments are made pursuant to this Agreement as a result of an indemnified entity's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders or members) as a result of actions included in the protection afforded by the indemnification provisions hereof, and except with respect to the liquidated damages provided for in Sections 2.5(d)(ii), 2.5(d)(iii), 3.4(c)(ii) and 5.5(d) and (e), neither Purchaser nor Seller (nor any of their Affiliates, contractors, consultants, officers, directors, shareholders, members or employees) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

(b) The Parties acknowledge and agree that if this Agreement is terminated due to an Event of Default, a Termination Payment shall be payable pursuant to Section 3.4(c) and such Termination Payment shall be the sole and exclusive remedy of a Party as a result of the early termination of this Agreement.

#### **8.9 *Joint Powers Authority***

Seller hereby acknowledges and agrees that Purchaser is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Second Amended and Restated Joint Powers Agreement dated July 25, 2013 (the "Joint Power Agreement"), that Purchaser is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of Purchaser. Seller agrees that Purchaser shall solely be responsible for all debts, obligations and liabilities to Seller accruing and arising out of this Agreement, and Seller agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any

remedies against, any of Purchaser's members, any cities or counties participating in Purchaser's community choice aggregation program, or any of Purchaser's retail customers in connection with this Agreement.

#### **8.10 *Survival.***

Notwithstanding any provisions herein to the contrary, the obligations set forth in Article 1, Sections 5.8, 8.1, 8.8, 8.12, 8.13, 8.14, 8.15, 8.20, and 8.23, the indemnity obligations set forth in this Agreement, and the limitations on liabilities set forth herein shall survive (in full force) the expiration or termination of this Agreement.

#### **8.11 *Severability.***

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect, provided that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the original intent of the Parties.

#### **8.12 *Standard of Review.***

(a) Absent the agreement of both Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 552 U.S. 1164 (2008) (the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by Applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in Applicable Law or market conditions that may occur. In the event it were to be determined that Applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

### **8.13 *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.

### **8.14 *Consent to Jurisdiction.***

Subject to Section 8.15, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the United States District Court for the Central District of California for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof (and agrees not to commence any suit, action or proceeding relating thereto except in such courts). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by U.S. registered mail to such Party's respective address set forth in Section 8.4 will be effective service of process for any suit, action or proceeding in any such courts with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the United States District Court for the Central District of California and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

### **8.15 *Waiver of Trial by Jury.***

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

### **8.16 *Disputes.***

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for

resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then either Party may pursue any or all of its remedies available under law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof. Any undisputed payment due or payable by one Party to the other shall not be withheld on account of the occurrence or continuance of any legal proceedings or the existence of a Dispute.

#### **8.17 *No Third-Party Beneficiaries.***

Except as set forth in a Lender Consent or the indemnification provisions hereof that expressly accrue to the benefit of third parties, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

#### **8.18 *No Agency.***

This Agreement is not intended, and shall not be construed, to create any association, joint venture or partnership between the Parties or to impose any such obligation or liability upon either Party. Except for the agency Seller grants Purchaser in Section 3.2(c), neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

#### **8.19 *Cooperation.***

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

#### **8.20 *Further Assurances.***

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 8.19.

#### **8.21 *Captions; Construction.***

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

**8.22 *Entire Agreement.***

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

**8.23 *Counterparts.***

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**8.24 *Forward Contract.***

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that Purchaser and Seller are each “forward contract merchants” within the meaning of the Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS WHEREOF the Parties have executed this Agreement in the manner appropriate to each on the date set forth above.



**Sonoma Clean Power Authority**

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

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

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

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

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

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

**EXHIBIT A**  
**CONTRACT RATE**


---

## **EXHIBIT B**

### **DESCRIPTION OF WIND PROJECT**

The Wind Project will have a Nameplate Capacity Rating of approximately 41.2 MW. The Wind Project will be located [REDACTED] The Wind Project will generate electrical power that will be sold at wholesale.

The Wind Project will consist of:

Approximately 24 Turbines on tubular steel towers.

A network of several miles of low profile, gravel field roads providing access to the Turbines.

Electrical transformation equipment located at the Site.

An underground and aboveground electric cable collection system to carry electricity to the substations, as shown on **Exhibit C**.

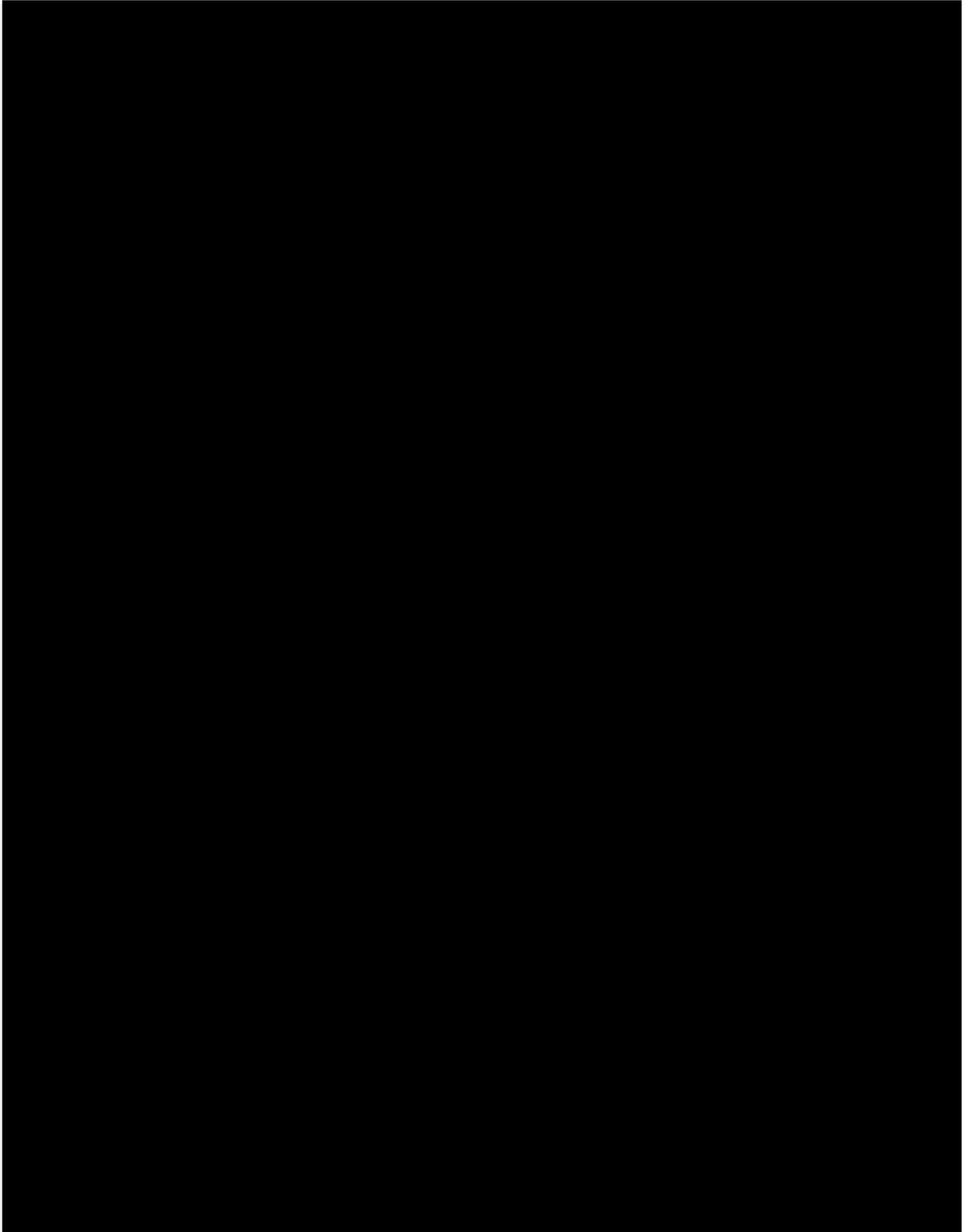
An underground and aboveground fiber-optic data collection system.

Subject to Section 4.4, at least one (1) permanent meteorological tower.

A temporary construction lay down area.

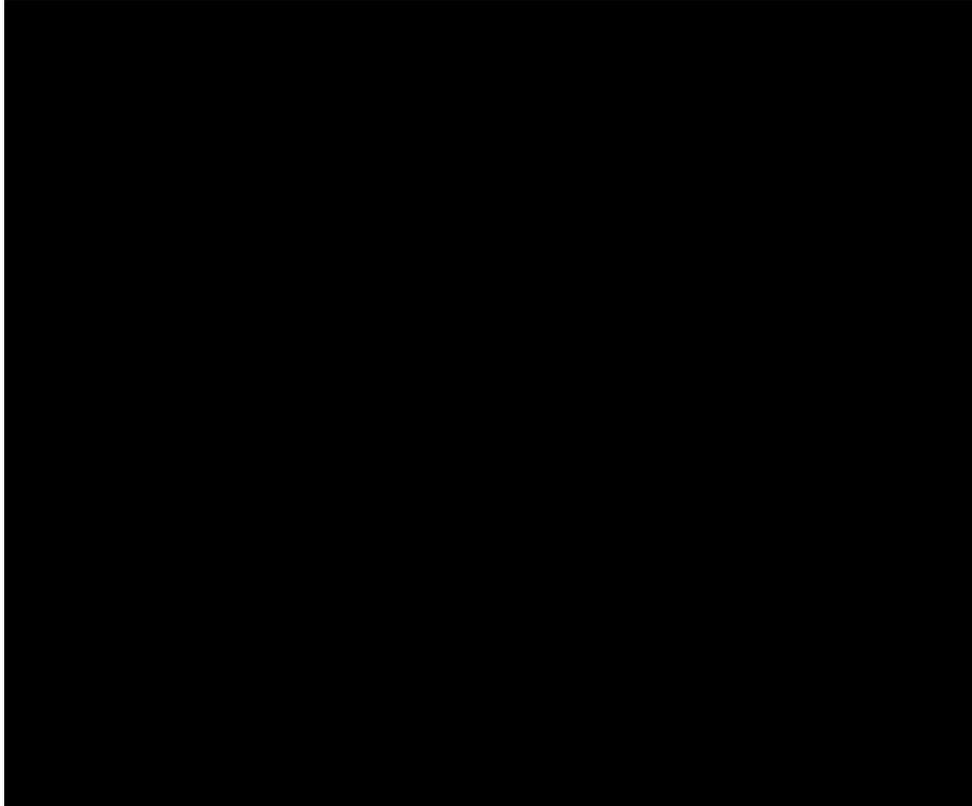
Maintenance/field office(s).

**EXHIBIT B-1  
WIND PROJECT SITE PLAN**



**EXHIBIT C**

**DESCRIPTION OF DELIVERY POINT AND ONE-LINE DIAGRAM**



**EXHIBIT D**

**MECHANICAL AVAILABILITY PERCENTAGE**

**Mechanical Availability Percentage (MAP)** – The fraction of total time during which the Wind Project is available to produce Energy as calculated in Step 1 below.

**STEP 1 – Calculate previous month’s MAP**

[REDACTED]

where,

[REDACTED]

Force Majeure (FM) = the sum of individual Turbine hours that Seller is excused from delivering Energy to Purchaser due to a Force Majeure Event pursuant to Section 8.5(a) of the Agreement divided by WTG

Forced Outage Hours (FOH) = the sum of individual Turbine Forced Outage hours divided by WTG

Period Hours (PH) = total hours in applicable month

Planned Outage Hours (POH) = the sum of individual Turbine Planned Outage hours divided by WTG

WTG = total number of Turbines in the Wind Project

[REDACTED]

**STEP 2 – Calculate** [REDACTED]

*Example 3*



**EXHIBIT E**  
**FORM OF LENDER CONSENT**  
**(FINANCING)**

[REDACTED]







[REDACTED]

■ [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**EXHIBIT G**  
**LETTER OF CREDIT**

**[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT**

**DATE OF ISSUANCE:**

**[DATE OF ISSUANCE]**

**[BENEFICIARY]** (“Beneficiary”)

**[Address]**

**Attention: [Contact Person]**

Re: **[ISSUING BANK]** Irrevocable Standby Letter of Credit No. **[REDACTED]**

Ladies and Gentlemen:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. **[REDACTED]** (the “Letter of Credit”) for the account of Sonoma Clean Power Authority (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain **[describe the underlying agreement which requires this LC]**.

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be **[written dollar amount]** United States Dollars (US\$**[dollar amount]**) (such maximum amount referred to as the “Stated Amount”).

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to **[ISSUING BANK]**, at any time during its business hours on such Business Day, at **[bank address]** (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of *Attachment A* hereto (the “Draw Certificate”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of *Attachment B* hereto (the “Draft”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to **[ISSUING BANK]** at our address set forth above, *Attention: [REDACTED]* (or at such other address as may be designated by written notice delivered to you as contemplated by numbered *paragraph 9* below). In the event of a presentation by facsimile transmission, the original of such documents shall be sent to us by overnight mail.

3. **Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [ ] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [ ] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Cancellation.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [one year from the issuance date] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of [New York], and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

**9. Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

**10. Irrevocability.** This Letter of Credit is irrevocable.

**11. Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to or to which this Letter of Credit relates, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

\*

\*

\*

*SINCERELY,*

[ISSUING BANK]

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

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

Address: \_\_\_\_\_

ATTACHMENT A

**FORM OF DRAW CERTIFICATE**

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. [REDACTED] (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the [REDACTED] of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of [REDACTED] U.S. dollars (US\$ [REDACTED]), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The conditions for a drawing by Beneficiary pursuant to [*describe the draw conditions from the underlying agreement*].
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

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

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

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

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

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

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

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

**ATTACHMENT B**

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.**

Date:

PAY TO: **[BENEFICIARY]**

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO. \_\_\_\_\_.

**[BENEFICIARY]**

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

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

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

**ATTACHMENT C**  
**CANCELLATION CERTIFICATE**

Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [PROJECT ENTITY], an affiliate of the Account Parties, under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

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

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

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

**EXHIBIT H**  
**Reserved**

## EXHIBIT I

### Milestone Schedule

No.	Date	Milestones
1	September 9, 2015	Received CEC Pre-Certification.
2	January 2017	Procures turbines for the Wind Project.
3	Anticipated August 31, 2016	Federal and State Environmental Permits.
4	Anticipated October 15, 2017	Completion of Initial Synchronization.
5	10 Business Days prior to COD	Submit WREGIS Standing Order Transfer.
6	Anticipated December 1, 2017	Commercial Operation Date.
7	10 days after COD	Submit final application and documentation necessary for final CEC Certification and Verification, and for Wind Project participation in the PIRP/EIRP
8	Anticipated 60 days after COD	Receipt of final CEC Certification and Verification.
9	Anticipated 90 days after COD	Wind Project is Certified by CAISO as eligible to participate in the Participating Intermittent Resource Program or Eligible Intermittent Resource Protocol

**EXHIBIT J**

**Reserved**

**EXHIBIT K**

**Reserved**

**EXHIBIT L**  
**FORM OF COMMERCIAL OPERATION CERTIFICATE**

This certification (“Certification”) is delivered by [REDACTED] (“Seller”) to Sonoma Clean Power Authority (“Buyer”) in accordance with the terms of that certain Power Purchase 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:

(a) Seller has successfully completed the installation and testing of no less than \_\_\_\_\_ [fill in 90% of nameplate] Turbines in compliance with the requirements of Wind Project’s Governmental Approvals, the Interconnection Agreements, CEC Eligible Renewable Energy Resource final certification requirements, and Seller’s equipment supply, construction and operating agreements;

(b) The Nameplate Capacity Rating of the Wind Project is \_\_\_ MW; provided, such Nameplate Capacity Rating shall not be less than 37 MW nor greater than 48 MW

(c) All relevant manufacturers’ warranties for the commencement of Commercial Operation or that continue for periods after the Commercial Operation Date, are in place and valid, and any relevant warranty periods have commenced;

(d) Seller has executed all agreements and made all arrangements necessary to deliver the Product from the Wind Project to the Delivery Point in compliance with the provisions of the Agreement;

(e) all of Seller’s security arrangements have been established in a form and in the amounts sufficient to meet the requirements of the Agreement;

(f) the insurance coverage requirements of the Agreement have been satisfied;

(g) except for final CEC Certification and Verification, all Governmental Approvals required to be obtained from any Governmental Authority to operate the Wind Project in compliance with applicable law and this Agreement have been obtained and are in full force and effect;

(h) Seller has satisfied all of the Commercial Operation Date requirements in Section 2.6(a);  
and

(i) Commercial Operation has occurred.

IN WITNESS WHEREOF, the undersigned has executed this Officer’s Certificate on behalf of the Company as of the \_\_\_ day of \_\_\_\_\_ 20\_\_.

[REDACTED]

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

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