

# City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL      DATE: SEPTEMBER 24, 2013

FROM: PUBLIC UTILITIES DEPARTMENT      WARDS: ALL

SUBJECT: POWER SALES AGREEMENTS BETWEEN SOUTHERN CALIFORNIA  
PUBLIC POWER AUTHORITY AND THE CITY OF RIVERSIDE – RECURRENT  
ENERGY’S CLEARWATER AND COLUMBIA TWO SOLAR PHOTOVOLTAIC  
PROJECTS

## **ISSUE:**

The issue for City Council consideration is approval of the Power Sales Agreements (“PSAs”) between Southern California Public Power Authority (“SCPPA”) and the City of Riverside for the Recurrent Energy’s Clearwater and Columbia Two Solar Photovoltaic projects.

## **RECOMMENDATIONS:**

That the City Council:

1. Approve the 20-year Power Sales Agreements between SCPPA and the City of Riverside to provide renewable solar photovoltaic energy and Renewable Energy Credits from the Recurrent Energy’s Clearwater and Columbia Two Solar Photovoltaic Projects (“Projects”);
2. Authorize the City Manager, or his designee, to contract up to an aggregate of additional 9 MW under the PSAs if other SCPPA participants (Azusa and Pasadena) in the Projects fail to obtain timely approvals from their respective City Councils to help preserve the financial viability of the Projects;
3. Authorize the City Manager, or his designee, to execute any future amendments to the PSAs under terms and conditions substantially similar or superior to these PSAs;
4. Authorize the Public Utilities General Manager, or his designee, to execute any documents necessary to administer the PSAs that are consistent with the established policies by the City Council; and
5. Authorize the City Manager or his designee to terminate the PSA for circumstances provided in the PSAs (e.g., Project is no longer viable, or the annual performance standard is not met).

## **BOARD RECOMMENDATION:**

This item was unanimously approved by the Board of Public Utilities on September 6, 2012.

## **BACKGROUND:**

Riverside has been very supportive of the use of renewable energy to serve the retail energy requirements and has historically adopted more stringent requirements than those imposed on IOUs. Riverside Public Utilities' (RPU) current Renewable Portfolio Standard (RPS) requires that it supply 20%, 25% and 33% of retail energy needs using renewable resources by 2010, 2015 and 2020, respectively.

In 2012, California's Senate Bill (SB) X1-2, mandated that all electric utilities, including RPU, procure increasing amounts of renewable power (primarily from in-state resources) to serve its retail needs during specific compliance periods. Such targets must reach 33% renewable resources no later than calendar year (CY) 2020.

To achieve these RPS goals, RPU has successfully contracted with several renewable projects in the last two years and staff is continuously seeking out additional viable renewable projects. Three weeks ago, Recurrent Energy approached SCPPA with a unique opportunity - the Clearwater and Columbia Two Solar PV projects (Projects), a combined 35 megawatt (MW) solar photovoltaic (PV) projects located in Kern County. The Projects are priced substantially lower, 10% to 15% lower, than the comparably sized projects in the recent SCPPA renewable Request for Proposal (RFP) process and significantly lower, 30% lower, than similar solar PV projects Riverside signed power purchase agreements with late last year. Staff attributes the very competitively priced offer by Recurrent Energy to several factors:

1. The continued decline in the equipment and labor costs of solar PV projects;
2. Significantly lower than anticipated transmission interconnection costs for projects located in Kern County; and
3. The "in-fill" nature of the Projects as part of a much larger solar PV project site of a total of 100 MW, most of which is in advanced stages of development and already contracted for with other purchasers. Thus, "in-fill" projects require almost no additional incremental development costs.

Recurrent Energy is in the final site development stage and wishes to contract for the remaining Projects expeditiously before it issues engineering and construction contracts. Recurrent Energy requires an aggressive timeline for approval of the PSAs, no later than September 30, 2013. Staff aggressively negotiated through SCPPA and believes that the PSAs are in substantially final form with some remaining issues still to be addressed. Staff aggressively negotiated through SCPPA and is requesting that the City Council approves the PSAs.

The Recurrent Energy's Projects will aid RPU in achieving the RPS goals and partially replace the existing Bonneville Power Administration peaking agreement, expiring on May 1, 2016, as well as having the following desirable characteristics and favorable terms, including:

***Economy of Scale of Joint SCPPA Project:*** The two Projects are part of a 100 MW portfolio, out of which 20 MW has been contracted by Southern California Edison (SCE) and another 45 MW has been contracted by the California Department of Water Resources. The remaining 35 MW will likely be shared by Riverside (26 MW), Pasadena (6 MW) and Azusa (3 MW) through SCPPA. SCPPA will enter into a Power Purchase Agreements (PPA) with

Recurrent Energy for a combined 35 MW of the Projects on behalf of the participating SCPPA members and then in turn will enter into individual PSAs with the participating SCPPA members under the same terms and conditions of the SCPPA-Recurrent PPA.

**Developer's Experience:** With a 2 gigawatt (GW) project pipeline, over 700 MW of contracted projects and 260 MW of projects in operation, Recurrent Energy has one of North America's largest solar portfolios.

**Project Site Locations:** The projects are located in Kern County, California. Recurrent has firm site control of a combined 340 acres for both projects via option to purchase agreements.

**Characteristics and the Size of the Project:** Up to 26 MW of peaking renewable power to partially replace the existing 60 MW diversity exchange peaking agreement with Bonneville Power Administration (BPA), which expires on May 1, 2016, and meet projected future load growth.

**Interconnection:** The Large Generator Interconnection Agreement (LGIA) for the entire portfolio of 100 MW was signed in July 2013, allowing SCE to finalize designs and kick off construction of the interconnection facilities required for the projects. No deliverability network upgrades are required.

**Term of the PSA:** Twenty-year PSAs commencing on the Commercial Operation Date (COD) currently anticipated at the end of 2014.

**Pricing:** The all-in price for the energy, capacity and environmental attributes is fixed at \$69.98 per megawatt/hour (MWh) over the term of the contract. The pricing under this PPA is significantly lower (14%) than the approximately \$80.00 per MWh that was costing RPU for San Onfre Nuclear Generating Station (SONGS) energy.

**Mitigation of Development Risks:** The PPAs include enforceable development milestone dates with significant financial penalties, ranging from \$3,000 to \$5,000/day, if dates are missed, or in the more severe cases, Riverside can unilaterally terminate the PPAs.

**Mitigation of Future Renewable Integration Costs and Performance Risks:** Recurrent Energy will share future cost exposures assessed by the California Independent System Operator (CAISO) to integrate renewable resources of up to \$250,000/year. RPU will pay its proportional share of costs exceeding \$250,000. In exchange, RPU has a unilateral right to extend the PPAs under favorable terms and conditions at the end of the term. The PPAs establish minimum annual performance standards. Failure to meet the standards may result in significant monetary penalties up to and including termination of the PPAs.

**Sharing of Regulatory Costs:** Recurrent Energy will share in potential regulatory costs, up to \$500,000/project/year with a maximum \$2,000,000 over the term, to defend against future laws or regulations that negatively impact the economic value of this resource (e.g., solar PV projects are no longer considered to be a renewable resource).

**First Right of Offer:** Recurrent Energy must first offer to sell the Projects to SCPPA/RPU before Recurrent Energy can sell the projects to third parties.

**Contribution Toward RPU's RPS Goal:** RPU's share of the Projects will generate approximately 65,000 MWh of renewable energy, or 3.25% of Riverside's RPS requirements in 2015. The projects qualify as an in-state renewable resource under SB X1-2 rules.

**Additional Contract Quantity:** Because of all the favorable attributes listed above, RPU recommends approval of up to an additional 6 MW if in the event one of the other SCPPA participants fails to obtain the required approval of their governing bodies. This will help ensure the financial viability of the project.

**FISCAL IMPACT:**

The annual cost of power under the PSAs is estimated to be approximately \$5.53 million beginning in Fiscal Year 2014/15. This cost is fixed with no annual escalation for 20 years. Staff will incorporate the costs of the PSAs in future power supply budgets.

Prepared by:	Stephen H. Badgett, Interim Public Utilities General Manager
Certified as to availability of funds:	Brent A. Mason, Finance Director/Treasurer
Approved by:	Belinda J. Graham, Assistant City Manager for Scott C. Barber, City Manager
Approved as to form:	Gregory P. Priamos, City Attorney

**Attachments:**

1. Power Sales Agreements between SCPPA and RPU
2. RPU Board Meeting Minutes of September 6, 2013

*Execution Copy*

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**CLEARWATER SOLAR PROJECT**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF RIVERSIDE, CALIFORNIA**

**Dated as of September 19, 2013**

## **CLEARWATER SOLAR PROJECT POWER SALES AGREEMENT**

1. **PARTIES.** This CLEARWATER Solar Project Power Sales Agreement, is made and entered into as of this 19th day of September 2013, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” created under the provisions of the Act, and the CITY OF RIVERSIDE, California, a California charter city and municipal corporation organized and existing under the laws of the State of California, hereinafter designated as “Riverside,” or, depending upon context, as “Participant.” SCPPA and Riverside are each sometimes hereinafter referred to individually as “Party” and together as “Parties.”
  
2. **RECITALS.** This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act”), by its members, which are municipalities and an irrigation district that supply or will supply electricity in the State of California, for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.
  
  - 2.2 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the “Renewable Electric Energy Resource Project” to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA’s Joint Powers Agreement. Thereafter on March 17, 2006, the Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project. Thereafter, on January 19, 2012, the Board of Directors issued Resolution 2012-008 establishing a Phase II Renewable Development Project (“Phase II”) and declaring the Phase II to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement.
  
  - 2.3 In pursuit of the goals of the Renewable Electric Energy Resource Project (including Phase II) SCPPA issued Requests for Proposals (“RFP”) for potential renewable electric resources to address SCPPA member renewable energy needs, and as a result of responses to that RFP SCPPA and three of its members, the Cities of Azusa, Colton and Riverside (the “Project Participants”), have investigated the feasibility of a photovoltaic solar electric generating facility (the “Facility”) to be designed, constructed, maintained and operated by RE Clearwater Solar LLC, a Delaware limited liability company (the “Power Purchase Provider”), an affiliate of Recurrent

Energy LLC, a Delaware limited liability company (the "Project"). The Facility will be located in Kern County, California, on a site leased or owned by the Power Purchase Provider.

2.4 SCPPA desires to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of all Facility Output including, but not limited to, Energy, Capacity Rights and the associated Environmental Attributes from the Facility for the purpose of selling all said purchased Facility Output to Participant and the other Project Participants pursuant to this Agreement and Power Sales Agreements with such other Project Participants.

2.5 Participant has a need for an economical, reliable source of Energy, Capacity Rights and Environmental Attributes to meet the requirements of new environmental and energy procurement laws, as well as the demands of its current and/or future customers in an environmentally responsible manner and, as such, has determined that it is desirable to enter into this Agreement to purchase a Contract Share of the Energy and Environmental Attributes of the Facility from SCPPA.

3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows.

4. **DEFINITIONS.** The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Power Purchase Agreement, which is incorporated herein by this reference, or by the definitions set forth in the attached Appendix A

5. **TERM, PURCHASE AND SALE OF FACILITY OUTPUT.**

5.1 Term. This Agreement shall be effective upon execution and delivery by both Parties (the "Effective Date") and, unless earlier terminated pursuant to an express provision of this Agreement, shall be coterminous with the Power Purchase Agreement.

5.2 Purchase and Sale of Contract Share. In accordance with the terms and conditions hereof, commencing on the first date that Test Energy is available and continuing throughout the Term, SCPPA shall sell, schedule, and deliver to the Point of Delivery, and Participant shall purchase and accept from SCPPA at the Point of Delivery, all Facility Output and Replacement Energy associated with Participant's Contract Share.

6. **OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.**

Establishment and Authorization of the Coordinating Committee. The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) the administration, as applicable, of any operating agreement or any maintenance agreement, (v) otherwise making any

recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto, (vi) exercising any rights with respect to any default by the Power Purchase Provider under any agreements, deeds of trust, leases or other instruments and (vii) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant (“Authorized Representative”). Each Project Participant shall be entitled to cast a vote equal to its Contract Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Participant shall, within 30 days after SCPPA has entered into the Power Sales Agreement between SCPPA and Participant, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant’s representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee (“Chairperson”) shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA’s representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of Project Participants having Contract Shares aggregating at least eighty percent (80%) of the total Project Contract Shares cast thereon. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, such Project Participant agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action. Participant acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Participant in connection with any such Project Agreement or supplement or amendment, provided

that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement.

- 6.1 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 the Coordinating Committee shall have the following responsibilities:
- 6.1.1 Provide liaison between SCPPA and the Project Participants at the management or other levels with respect to the operation and ongoing administration of the Project, and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
  - 6.1.2 If any desired Project design, feasibility or planning studies or activities which are to be completed by SCPPA have not been completed by the Effective Date of this Agreement, oversee, as appropriate, the continuation and completion of such Project design, feasibility or planning studies or activities.
  - 6.1.3 Exercise general supervision over any subcommittee established pursuant to Section 6.3.5.
  - 6.1.4 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
  - 6.1.5 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 7 of this Agreement.
  - 6.1.6 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 7 of this Agreement.
  - 6.1.7 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
  - 6.1.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the Facility or an ownership interest therein and the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.

- 6.1.9 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, diurnal, barometric and meteorological information, solar photovoltaic metallurgic chemical and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, shaping, exchanging, balancing, movement, or other delivery information, climate and weather related matters, cloud conditions, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts, consultants or others.
- 6.1.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.1.11 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities
- 6.1.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.1.13 Review, modify, approve or otherwise act upon any proposed change to the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.1.14 Review, approve or otherwise act upon any proposed extension or modification of any date set forth in Appendix I of the Power Purchase Agreement or of any Milestone under the Power Purchase Agreement which, in the discretion of the Coordinating Committee, may be appropriate, desirable or otherwise in SCPPA's interest. The Coordinating Committee

may impose other conditions or qualifications upon the grant of any such extension as the Coordinating Committee shall deem appropriate.

- 6.1.15 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed Energy Production under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.
- 6.1.16 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate., including changes to Appendix B when necessary to reflect a reallocation of Contract Shares after termination of a Defaulting Project Participant's rights and obligations in the Project pursuant to section 9.4 of this Agreement or an assignment of a Participant's rights and obligations under section 16 of this Agreement. Any such change to Appendix B shall be considered an element of the administration of this Agreement and not an amendment requiring the consent of the Parties hereto.
- 6.1.17 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.
- 6.1.18 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any Point of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.1.19 Review, and, if appropriate, recommend, modify or approve policies or programs formulated by the Project Manager, any counterparty under any Project Agreement or any other Person for the exchange of energy from the Facility.
- 6.1.20 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the solar energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.1.21 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.1.22 Review, modify and approve SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any

uninsured claim that the Project Manager may settle without prior approval of the Coordinating Committee.

- 6.1.23 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.1.24 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions contemplated in the Power Purchase Agreement.
- 6.1.25 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters.
- 6.1.26 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Ancillary Documents, other Project Agreements, or as may otherwise be appropriate or beneficial to the Project.

6.2 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.2.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase Agreement, including any purchase or acquisition of the Facility or any portion thereof and shall carry out those measures necessary to address such developments, including any purchase or acquisition of the Facility or any portion thereof.
- 6.2.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.
- 6.2.3 Scheduling Procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act

upon and approve or modify the practices and procedures to be followed by the Project Participants for the scheduling, delivering, controlling and allocating Facility Output associated with the Project.

- 6.2.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.2.5 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
- 6.2.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 6.7 of this Agreement.
- 6.2.7 Revision of Appendix B. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendix B, as applicable, of this Agreement as provided in and subject to the provisions of Sections 6.2.16, 9.4 and 16.
- 6.2.8 Supervening Authority of the Board. The Board of Directors is reposed with complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Coordinating Committee or which is specified as being within the authority of the Coordinating Committee pursuant to the provisions of this Agreement, including those matters enumerated in Section 6.1 and 6.2 of this Agreement.
- 6.2.9 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through any development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement.
- 6.4 Scheduling Coordinator. SCPPA, or upon SCPPA's designation, one of the Project Participants, as the Project Participants may approve, shall act as Scheduling Coordinator on behalf of all of the Project Participants with respect to the Energy, Capacity Rights, Test Energy and any other such products derived from Facility Output, from the Facility to the Point of Delivery on the CAISO grid as provided in the Power Purchase Agreement.

- 6.5 Contract Administration. SCPPA shall use best efforts, on behalf of the Participants, to maximize the value of, and all products, rights, and benefits pursuant to, the Power Purchase Agreement and Scheduling Coordinator Agreement.
- 6.6 Adoption of Annual Budget. At least sixty (60) days prior to the beginning of each Fiscal Year, SCPPA will prepare, or cause to be prepared, and submit to the Participants, a proposed Annual Budget for such Fiscal Year. Such Annual Budget shall reflect the most recent Contract Costs estimates and other information provided to SCPPA. SCPPA may include in the Annual Budget reasonable amounts in excess of the estimated Contract Costs to be collected as an operating reserve to ensure that SCPPA may timely pay all Contract Costs. The Project Participants may submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the proposed Annual Budget. The Board of Directors shall adopt the Annual Budget not less than ten (10) days or more than sixty (60) days prior to the beginning of such Fiscal Year and shall cause a copy of such adopted Annual Budget to be delivered to the Participants. During any Fiscal Year, upon 10 calendar days' notice to the Participants, the Board of Directors may adopt an amended Annual Budget for and applicable to the remainder of such Fiscal Year. The Annual Budget, and not actual Contract Costs, shall establish the basis for Billing Statements to the Project Participants pursuant to Section 7 of this Agreement.
- 6.7 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts associated with this Agreement, including but not limited to Energy, Test Energy, Contract Costs, billings and collections under this Agreement. Such records shall be maintained for a period of no less than four (4) years following each applicable Fiscal Year.
- 6.8 Adjustment of Billing. On or before 150 days after the end of each Fiscal Year, the Authority shall submit to the Project Participants a detailed statement of (i) the actual Contract Costs, including credits and adjustments thereto, if any, for all of the months of such previous Fiscal Year, and (ii) the maintenance of an operating reserve as permitted in Section 6.7 hereof. If, on the basis of the statement submitted pursuant to this Section 6.9, the Participant's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year exceeds the amounts of the applicable Billing Statements billed to Participant hereunder, then the difference will be billed to Participant and Participant shall promptly pay SCPPA for such adjustment billing. If, on the basis of the statement submitted pursuant to this Section 6.9, the Participant's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year is less than the amounts of the applicable Billing Statements billed to Participant hereunder, then SCPPA shall credit Participant the difference on Participant's next Billing Statement.
- 6.9 Provide Information. SCPPA agrees to supply Participant, upon request, with information and documentation associated with Contract Costs. Participant agrees to supply SCPPA with scheduling and settlement information and documentation, if any, requisite and necessary to reconcile and allocate Contract Costs.

**7. CHARGES AND BILLINGS.**

- 7.1 Billing Statement. By the fifth (5<sup>th</sup>) calendar day of each Month during the Term, SCPPA shall prepare and deliver a Billing Statement to Participant for its Contract Share of projected Contract Costs, based on the Annual Budget. Participant shall pay SCPPA amounts due under said Billing Statement on or before the twenty-fifth (25<sup>th</sup>) day of said Month.
- 7.2 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Contract Costs and other costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.3 Disputed Billing Statement. In case any portion of any Billing Statement received by Participant from SCPPA shall be in bona fide dispute, Participant shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, will be credited to Participant by SCPPA after such determination. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Participant with regard to SCPPA's position relative thereto within thirty (30) days following receipt of written notification by Participant of such dispute.
- 7.4 Annual Reconciliation of Costs. As soon as practicable after the end of each Fiscal Year, SCPPA will submit to Project Participants a detailed statement of the actual aggregate Contract Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Fiscal Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Fiscal Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.1, the actual aggregate Contract Costs and other amounts payable by the Project Participants for any Fiscal Year exceed the amount thereof which Project Participants have been billed, Project Participants shall pay SCPPA, within 20 days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.1, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Fiscal Year are less than the amount therefor which Project Participants have been billed, SCPPA shall, unless otherwise directed by Participant or the other Project Participants with respect to moneys owed to each, credit such excess against Participant's and the other Project Participants' next monthly Billing Statement.
- 7.5 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project

- 7.6 Prepayment of Monthly Costs. Participant may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Participant with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Participant and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Participant to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Participant's other obligations under this Agreement.
- 7.7 Costs or Expenses Incurred for Sole Benefit of Participant. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Participant, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Participant, in which event only Participant (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Participant shall be deemed to be paid last from amounts paid by Participant for the payment of its Billing Statements or Default Invoices.
- 7.8 Credit or Other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. .
- 8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.**
- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project, (ii) the effective date of any Project Agreement, (iii) the effective date of the Power Purchase Agreement (iv) the date upon which SCPPA first incurs or accrues costs associated with the Power Purchase Agreement and other Project Agreements, or

(v) the date of the first delivery of Facility Output to Participant and continuing through the Term of this Agreement, Participant shall pay SCPPA the amounts of Contract Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Participant in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Default Invoices received by Participant as a result of the operation of Section 9 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 Source of Payments. The Participant hereby represents, warrants and agrees that the obligations of Participant to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Participant payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Participant will annually in each and every fiscal year of Participant during the Term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Participant will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Participant to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Participant hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or Person, is required on the part of the Participant for the execution and delivery by the Participant of this Agreement, or the performance by the Participant of its obligations under this Agreement except for such as have been obtained.
- 8.5 Conflicts. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, the execution and delivery of this Agreement by Participant, and Participant's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Participant's power revenue fund.
- 8.6 Litigation. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Participant (service of process on Participant having

been made) in any court that questions the validity of the authorization, execution or delivery by Participant of this Agreement, or the enforceability on Participant of this Agreement.

## 9. NONPERFORMANCE AND PAYMENT DEFAULT.

- 9.1 Nonperformance by Participant. Subject to the provisions in this Section 9 regarding a Payment Default, if a Participant shall fail to perform any covenant, agreement or obligation under its Power Sales Agreement, SCPPA may, in the event the performance of any such obligation under this Agreement remains unsatisfied after thirty (30) days' prior written notice thereof to such Participant and a demand to so perform, take any action permitted by law to enforce its rights under its Power Sales Agreement and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Participant with regard to its failure to so perform.
- 9.2 Notice of Payment Default. Promptly following a Payment Default by a Participant, SCPPA shall provide written notice to such Participant that as a result of a Payment Default it is a Defaulting Project Participant whose rights, including its Contract Shares, under its Power Sales Agreement are subject to discontinuance, termination and disposal within 30 days of the date of such notice. Notice of such Payment Default shall be provided promptly by SCPPA to all other Participants.
- 9.3 Retention of Rights During Payment Default Period. During a Payment Default Period with respect to a Defaulting Project Participant, its rights, including its Contract Shares, under its Power Sales Agreement shall not be discontinued, terminated or disposed of as provided for in Section 9.4 of its Power Sales Agreement as a result of a Payment Default. During such Payment Default Period, SCPPA shall send to the Defaulting Project Participant a separate Default Invoice. If the Defaulting Project Participant pays in full such default invoice within the Payment Default Period, the Defaulting Project Participant shall no longer be deemed a Defaulting Project Participant and its rights, including its Contract Shares, under its Power Sales Agreement shall not be subject to discontinuance, termination or disposal as provided for in Section 9.4 of its Power Sales Agreement. The Defaulting Project Participant shall make separate payments to SCPPA with respect to its Billing Statement and a Default Invoice.
- 9.4 Rights Under Power Sales Agreement Terminated. If a Defaulting Project Participant fails to pay its Default Invoice within the Payment Default Period, its rights, including its Contract Shares, under its Power Sales Agreement shall immediately and permanently be discontinued and terminated; provided, however, the Defaulting Project Participant's obligation to make payment of its Default Invoice shall not be eliminated or reduced and the Defaulting Project Participant's other obligations to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of its rights and obligations, less SCPPA's related costs and expenses. SCPPA shall immediately notify each of the other Participants of such discontinuance and termination.

- 9.4.1 SCPPA shall, to the extent permitted under the Project Agreements, offer to convey, transfer and assign to all non-Defaulting Project Participants, on a temporary or permanent basis as determined by SCPPA, the Project rights and obligations of the Defaulting Project Participant, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting Project Participants the amount of Project rights and obligations requested, if the aggregate of such requests does not exceed the amount of the Project rights and obligations of the Defaulting Project Participant, or (ii) all requesting non-Defaulting Project Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project rights and obligations of the Defaulting Project Participant. Each such requesting non-Defaulting Project Participant shall assume all, but not less than all, Project rights and obligations so conveyed, transferred and assigned to it by SCPPA.
- 9.4.2 If all of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting Project Participants as provided in Section 9.4.1 of its Power Sales Agreement, SCPPA shall, to the extent permitted under the Project Agreements and to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) of Defaulting Project Participant's Project rights and obligations to other SCPPA members or to third parties, all in accordance with applicable law. Each such requesting SCPPA member shall assume all, but not less than all, Project rights and obligations so conveyed, transferred and assigned to it by SCPPA.
- 9.4.3 If, at any time or from time to time, any of the Project rights and obligations of a Defaulting Project Participant are not conveyed, transferred and assigned as provided in Sections 9.4.1 or 9.4.2 of its Power Sales Agreement, SCPPA shall use its best efforts, to the extent permitted by the Project Agreements and economically beneficial, to offer all non-Defaulting Project Participants, other SCPPA members and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project rights and obligations or to remarket or resell such Facility Output, or cause the same to be remarketed or resold; provided further, however, that without eliminating Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of Facility Output associated with Defaulting Project Participant's Project rights. If at the time of any Coordinating Committee meeting, any of Defaulting Project Participant's Project rights and obligations are not conveyed, transferred and assigned as provided in Sections 9.4.1 or 9.4.2, the associated voting rights with respect to Defaulting Project Participant's Project rights and obligations shall be redistributed pro rata among the non-Defaulting

Project Participants, based upon each non-Defaulting Project Participant's Contract Share, so that the total voting rights remain at 100%.

Except as provided in this Section 9.4 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any Project Participant's Rights and Obligations without the prior written consent of the Project Participant.

9.5 Use of Operating Reserve. With respect to a Payment Default by a Participant, funds in any operating reserve for the Project shall be used, to the extent necessary and to the extent available, to pay amounts due under the Power Purchase Agreement. To the extent deemed necessary by SCPPA, a pro-rated amount of the Default Invoice (excluding any amounts due to late payment) may be added to the next Billing Statement for each non-Defaulting Project Participant in order to replenish the operating reserve.

## 10. CHARACTER, CONTINUITY OF SERVICE.

10.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in the Power Purchase Agreement or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the Power Purchase Provider or, if SCPPA shall acquire the Facility or an ownership interest therein, SCPPA, its agent or the Project Manager, as the case may be, may temporarily interrupt or curtail deliveries of Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any associated Facility outage, which shall cause a reduction in deliveries of Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

10.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of Facility Output at the Point of Delivery, (i) the resulting reduction in Facility Output at the Point of Delivery shall be shared by the Project Participants pro rata in accordance with their respective Contract Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Contract Shares.

10.1.2 No such interruption or curtailment of deliveries of Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their obligations to make payments under their respective Power Sales Agreements, except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

- 10.1.3 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.
- 10.1.4 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants.
- 10.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Project Participants shall not thereby be relieved of their obligations to make payments under their respective Power Sales Agreements except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

## **11. SEVERAL OBLIGATION; LIABILITY.**

- 11.1 Participants' Obligations Several. Participant and each of the other Project Participants shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants under the other Power Sales Agreements to which such Project Participants are parties.
- 11.2 No Liability of SCPPA, Directors, Officers, Etc. Participant agrees that neither SCPPA nor any of its directors, officers, employees and agents shall be liable to Participant for loss of profits or direct or consequential loss or damage suffered by Participant as a result of the performance or non-performance (whether negligent or otherwise) of SCPPA or any of its directors, officers, employees or agents under this Agreement. Participant releases SCPPA and its directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of SCPPA under this Agreement. No such performance or non-performance by SCPPA shall relieve Participant from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. The provisions of this Section 11.2 shall not be construed so as to relieve SCPPA from any obligation under this Agreement.

- 11.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 11.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Participant may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA and Participant shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Participant in accordance with Sections 6.9 and 7.4 hereof.
- 11.4 Indemnification for Claims of Retail Customers. Participant shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with electric service to any of its retail customers caused by the operation or failure of operation of the Facility or any portion thereof, and shall indemnify and hold harmless each of the other Project Participants and SCPPA from any such claim, action or judgment (including reasonable attorneys' fees and other costs of defense).
- 11.5 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 11.2, 11.3 and 11.4 hereof, Participant or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 11.6 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 11, the provisions of this Section 11 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 11.7 SCPPA Directors, Officers, Employees, Agents Not Individually Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no member of SCPPA's Board of Directors, officer, employee or agent of SCPPA or member of SCPPA in its capacity as a member of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The undertakings by SCPPA under the Power Sales Agreements shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.
12. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

**13. CONDITIONS TO TERMINATION OR AMENDMENT.**

Rights Among Participants. None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except upon written notice to and written consent or waiver by each of the other Project Participants and upon similar amendment being made to the Power Sales Agreement of any other Participant requesting such amendment after receipt by such Participant of notice of such amendment.

**14. GOVERNING LAW.** This Agreement shall be interpreted, governed by and construed under the laws of the State of California.

**15. ARBITRATION.** If a dispute arises between the Parties which the Authorized Representatives are unable to resolve, the Parties may submit the dispute to arbitration. The arbitration will be conducted in accordance with the mutual written agreement of the Parties.

**16. ASSIGNMENT.** Unless otherwise mutually agreed to by the Parties, a Participant may assign some or all of its rights and obligations under its Power Sales Agreement, including its Contract Share, only to other SCPPA members under the same terms and conditions of its Power Sales Agreement. In the event of such an assignment, Appendix B shall be revised by SCPPA to reflect the new Contract Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.

**17. NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority  
Attn: Bill D. Carnahan, Executive Director  
1160 Nicole Court  
Glendora, California 91740

City of Riverside  
Riverside Public Utilities Dept.  
Attention: General Manager  
3750 University Ave. 5<sup>th</sup> Floor  
Riverside, California 92501  
Either Party may give notice of a change of address or other information set forth above by giving notice as provided in this section.

**[SIGNATURES ON NEXT PAGE]**

*[Faint, illegible text, likely a signature or stamp]*

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalf by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

By: \_\_\_\_\_  
RONALD E. DAVIS  
President

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

CITY OF RIVERSIDE, CALIFORNIA

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

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

Attest: \_\_\_\_\_

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

APPROVED AS TO FORM

*Susan Wilson*

DEPUTY CITY ATTORNEY

## APPENDIX A

### DEFINITIONS

1. **Annual Budget.** The budget adopted by SCPA pursuant to Section 6.7, including any amendments thereto, which shall show a detailed estimate of the Contract Costs and all revenues, income, or other funds to be applied to such Contract Costs, if any, for and applicable to a Fiscal Year.
2. **Billing Statement:** The written statement prepared or caused to be prepared each Month by, or on behalf of SCPA, which shall show for such Month the amount to be paid to SCPA by a Participant in accordance with the provisions of Section 7.
3. **Board of Directors.** The Board of Directors of the Southern California Public Power Authority.
4. **Capacity.** The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
5. **Contract Costs:** All costs incurred by SCPA in the administration, operation and maintenance of the Project, including any costs incurred or expenditures made pursuant to the Power Purchase Agreement and all other Project Agreements. Contract Costs shall consist of both direct charges and associated administrative and general expenses.
6. **Contract Share:** A percentage of all products, rights, benefits, obligations, and liabilities, without limitation, pursuant to the Power Purchase Agreement, including but not limited to Facility Output (or Replacement Energy, when applicable), Capacity Rights and Environmental Attributes. A schedule of Contract Shares for the Projects Participants is included as Appendix B, which may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.
7. **Cured Payment Default.** A Payment Default which has been cured in accordance with Section 9.3 of this Agreement. If at any time during the Payment Default Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPA and the Payment Default Period shall expire.
8. **Default Invoice.** An invoice during the Payment Default Period and the Payment Default Period issued to a Defaulting Project Participant pursuant to Section 9 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Payment Default Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
9. **Defaulting Project Participant.** A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not affected a Cured Payment Default.

- 10. Facility Output.** All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Energy (including Facility Energy, Delivered Energy and Excess Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility by SCPPA as owner following SCPPA's purchase of the Facility. The term Facility Output is synonymous with the term "Products" as defined in the Power Purchase Agreement.
- 11. Fiscal Year.** The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other period as determined by SCPPA.
- 12. Month:** A calendar month.
- 13. Payment Default:** A failure by a Participant to pay when due all of its Billing Statement for any Month.
- 14. Payment Default Period:** That period of time beginning on the initial date of a Payment Default and ending [30] days following a notice of default as provided in accordance with Section 9.2 hereof.
- 15. Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.
- 16. Power Purchase Agreement:** The agreement between SCPPA and the Power Purchase Provider for the purchase of the Energy from the Facility, including the associated Environmental Attributes, as amended from time to time. A copy of the Power Purchase Agreement is included as Appendix C.
- 17. Project Agreements.** The Power Purchase Agreement, this Power Sales Agreement and the Power Sales Agreements between SCPPA and the other Project Participants, any agency agreement between SCPPA and a Project Participant pursuant to which the Participant acts as the Project Manager, and a Scheduling Coordinator Agreement, should the Project Participants elect to enter into one.
- 18. Term:** The period of time during which the Agreement is in effect as defined in Section 5.1.
- 19. Test Energy:** Energy generated by the Facility and delivered to the Point of Interconnection prior to the Commercial Operation Date.
- 20. Uncontrollable Force:** Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.

**APPENDIX B**

**SCHEDULE OF CONTRACT SHARES**

<u>Participants</u>	<u>Contract Share</u>
City of Azusa	8.571%
City of Pasadena	17.143%
City of Riverside	<u>74.286%</u>
TOTAL	100.00%

**APPENDIX C**

**POWER PURCHASE AGREEMENT**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**RE CLEARWATER LLC**

**AND**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

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## POWER PURCHASE AGREEMENT

### PARTIES

THIS POWER PURCHASE AGREEMENT (this “*Agreement*”), dated as of this 19th day of September, 2013, is being entered into by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement (each as defined below) (“*Buyer*”), and RE CLEARWATER LLC, a limited liability company organized and existing under the laws of the State of Delaware (“*Seller*”). Each of Buyer and Seller is referred to individually in this Agreement as a “*Party*” and together as the “*Parties*.”

### RECITALS

WHEREAS, Buyer’s members have adopted or are adopting policies to comply with the California Renewable Energy Resources Act that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources; and

WHEREAS, on January 1, 2013, Buyer issued a request for proposals to acquire renewable energy resources; and

WHEREAS, Recurrent Energy responded to Buyer’s request for proposals on behalf of Seller and, following negotiation, has agreed to permit Seller to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy and associated environmental attributes; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### ARTICLE I DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions.** The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

“**Act**” means all of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or

officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble of this Agreement, and includes Appendices A through L, attached hereto.

“**Agreement Term**” has the meaning set forth in Section 2.2(a).

“**Ancillary Documents**” means all agreements and other documents included in the Performance Security.

“**Annual Contract Quantity**” means, for each Contract Year, the number of MWh set forth on Appendix C.

“**ASME**” means American Society of Mechanical Engineers.

“**Assumed Daily Deliveries**” has the meaning set forth in Section 13.4(c).

“**ASTM**” means American Society for Testing and Materials.

“**Authorized Auditors**” means representatives of Buyer or Buyer’s Authorized Representative who are authorized to conduct audits on behalf of Buyer.

“**Authorized Representative**” has the meaning set forth in Section 14.1.

“**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.

“**AWS**” means American Welding Society.

“**Bankruptcy**” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for ninety (90) days.

“**Brown Act**” has the meaning set forth in Section 14.21(d).

“**Business Day**” means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Riverside, California or New York, New York.

“**Buyer**” has the meaning set forth in the preamble of this Agreement.

“**Cal-OSHA**” means the California Occupational Safety & Health Administration.

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

“**CAISO Integration Amounts**” has the meaning set forth in Section 7.3(c).

“**CAISO Integration Amounts Cost Cap**” means the maximum dollar amount of CAISO Integration Amounts for which Seller is liable and shall equal (a) in any Contract Year, One Hundred Forty Three Thousand Dollars (\$143,000) and (b) during the Delivery Term, an aggregate of Eight Hundred Fifty Seven Thousand Dollars (\$857,000).

“**CAISO Integration Amounts Protocol**” has the meaning set forth in Section 7.3(d).

“**CAISO Intermittent Resource Protocol**” means the Participating Intermittent Resource Protocol of the CAISO Tariff (and any successor protocol thereto).

“**CAISO Tariff**” means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto.

“**CAMD**” means the Clean Air Markets Division of the EPA and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability of Environmental Attributes.

“**Capacity Rights**” means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, Local Capacity Requirement Attributes, associated attributes or reserves, or any of the foregoing as may in the future be defined by the CAISO, or any other balancing authority, reliability entity or Governmental Authority associated with the electric generating capability of the Facility, including the right to resell such rights.

“**CEC**” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

“**CEC Certified**” means that the CEC has certified that the Facility is an eligible renewable Energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.

“**CEC Performance Standard**” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“**CEQA**” means the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq., as amended from time to time, and any successor statute.

**“CEQA Determinations”** means that:

(a) The lead agency conducting the review of the Facility as required under CEQA shall have (i) reviewed and approved the CEQA Documents, (ii) issued a final approval for such Facility, and (iii) filed a Notice of Determination in compliance with CEQA; and

(b) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

**“CEQA Documents”** means an initial study and a final environmental impact report or equivalent document upon which the lead agency issued a final approval for the Facility.

**“Change in Law”** means a change to WREGIS, or any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority (other than Buyer), including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval.

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

**“Closing”** means the consummation of the transactions with respect to a sale pursuant to Buyer’s exercise of the Right of First Offer.

**“Commercial Operation”** means all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, “substantial completion” under the relevant construction contracts has been achieved, and the Facility possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to operate the Facility;

(c) Seller has delivered to Buyer a certificate of an independent engineer substantially in the form attached hereto of Appendix L-2;

(d) Seller has obtained all Permits (including the CEQA Determinations) required for the operation and maintenance of the Facility in accordance with this Agreement, including the Permits identified on Appendix B-1, and all such Permits are final and non-appealable;

(e) Seller has entered into an agreement providing for the operation and maintenance of the Facility with a Qualified Operator;

(f) Buyer has received the Delivery Term Security in a form reasonably acceptable to Buyer;

(g) The Facility is both authorized and able to operate and deliver Energy at the Contract Capacity in accordance with the Generator Interconnection Agreement, Prudent Utility Practices, the Requirements, and all Requirements of Law; *provided* that the Facility need not be CEC Certified as a condition to achieving Commercial Operation; and

(h) Seller has provided evidence reasonably satisfactory to Buyer that all terms and conditions of the Generator Interconnection Agreement have been fully performed such that the Facility is deemed eligible for Full Capacity Deliverability Status and qualifies for associated Resource Adequacy Attributes.

“**Commercial Operation Date**” means the date on which Commercial Operation of the Facility occurs, as determined pursuant to Section 3.5.

“**Confidential Information**” has the meaning set forth in Section 14.21(a).

“**Construction Start Date**” means the date on which Seller delivers to Buyer a written certification substantially in the form attached hereto as Appendix L-1.

“**Contract Capacity**” means 20 MW, as measured by the sum of inverter nameplate capacity.

“**Contract Price**” means, for any period of time, the applicable Contract Price set forth in Appendix A.

“**Contract Year**” means a twelve (12) month period beginning on the Commercial Operation Date and each successive twelve (12) month period thereafter.

“**Costs**” has the meaning set forth in Section 13.4(f)(iii).

“**Cover Damages**” has the meaning set forth in Section 6.3.

“**CPRA**” has the meaning set forth in Section 14.21(d).

“**Curtailed Period**” means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive from a Transmission Provider, the CAISO, WECC, NERC, or any other reliability entity due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, (d) over-generation or any other reason adversely affecting the normal function and operation of the CAISO grid or a Transmission Provider’s system, as may from time to time be identified by the CAISO, the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term “Curtailed Period” shall not include curtailments directed by CAISO for economic reasons.

“**Daily Delay Damages**” has the meaning set forth in Section 3.6(c).

“**Deemed Generated Energy**” has the meaning set forth in Section 7.5(c).

“**Default**” has the meaning set forth in Section 13.1.

“**Defaulting Party**” has the meaning set forth in Section 13.1.

“**Delivery Term**” has the meaning set forth in Section 2.2(b).

“**Delivery Term Security**” has the meaning set forth in Section 5.7(b).

“**Dispute**” has the meaning set forth in Section 14.3(a).

“**Dispute Notice**” has the meaning set forth in Section 14.3(a).

“**Downgrade Event**” shall mean any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or the commencement of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to such Person.

“**Early Termination Date**” has the meaning set forth in Section 13.4(a).

“**EI**” means Edison Electric Institute.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electric Metering Devices**” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“**Energy**” means electrical energy.

“**Enforceability Opinion**” means a reasoned opinion of Seller’s outside legal counsel in a form reasonably acceptable to, and addressed to, Buyer as to the enforceability and due authorization of this Agreement.

“**Environmental Attributes**” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated that are (a) at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Facility of Energy during the Delivery Term or any Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the

aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “*UNFCCC*”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including without limitation any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto), or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable Energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (i) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Energy production from any portion of the Facility, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (ii) depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean Energy, and (iii) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“**Environmental Attribute Reporting Rights**” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time, or any successor statute or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“**Environmental Attributes Value**” means the value of Environmental Attributes purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such index is not available, the value of the Environmental Attributes as determined by the average of three (3) nationally-recognized broker quotes for Environmental Attributes that meet the definition of Environmental Attributes set forth in this Agreement; *provided* that such index pricing or broker quotes shall relate to Environmental Attributes that are derived from comparable vintage and generation technology as the Environmental Attributes that are being replaced, and are from a generator that qualifies as an “eligible renewable energy resource” within the meaning of Section 399.16(b)(1)(A) of the California Public Utilities Code at the time of such pricing or broker quotes, as applicable.

“**EPA**” means the Environmental Protection Agency and any successor agency.

“**EPC Contractor**” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller’s; *provided, however*, that Seller or Seller’s affiliate(s) may serve as EPC Contractor.

**“EPS Compliance”** or **“EPS Compliant,”** when used with respect to the Facility, means that the Facility satisfies both the PUC Performance Standard and the CEC Performance Standard in effect at the time; provided, if it is impossible for the Facility to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the Facility shall be deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the PUC Performance Standard in effect at the time that it is possible for the Facility to satisfy while at the same time satisfying the CEC Performance Standard in effect at the time.

**“EPS Law”** means Sections 8340 and 8341 of the California Public Utilities Code as amended from time to time or any successor statute.

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

**“Facility”** means the 20 MW (ac) solar photovoltaic power generating facility described in Appendix B-1 and depicted on Appendix B-2, including all property interests and related transmission and other facilities.

**“Facility Assets”** has the meaning set forth in Section 14.25(a).

**“Facility Energy”** means Energy generated by the Facility, less station load and transmission losses to the Point of Delivery, as measured by CAISO-approved Electric Metering Devices.

**“Facility Lender”** means any financing party providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility (including pursuant to the consummation of a sale-leaseback transaction) or purchasing equity ownership interests of Seller or its Affiliates, any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

**“Facility Lender Consent”** has the meaning set forth in Section 13.3.

**“Facility Site”** means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-1 and Appendix B-2 where the Facility is or will be located

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

**“Force Majeure”** has the meaning set forth in Section 14.6(b).

**“Force Majeure Notice”** has the meaning set forth in Section 14.6(a).

**“Forced Outage”** means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

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

**“Gains”** has the meaning set forth in Section 13.4(f)(i).

**“GAAP”** means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

**“Generator Interconnection Agreement”** means, with respect to the Facility, that certain Clustering Large Generator Interconnection Agreement, dated as of July 8, 2013, between Seller, RE Columbia Interconnection Manager LLC, RE Columbia, LLC, RE Yakima LLC, RE Columbia Two LLC, and Southern California Edison Company for the interconnection of such Facility into the Transmission System.

**“Governmental Authority”** means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term “Governmental Authority” shall not include either Party.

**“Guaranteed Commercial Operation Date”** means December 31, 2014.

**“Guaranteed Generation”** means, with respect to each Contract Year, 80% of the Annual Contract Quantity of such Facility for such Contract Year, which amount shall be reduced by the aggregate amount of Deemed Generated Energy during all Seller Excused Hours during such Contract Year with respect to such Facility.

**“IEEE”** means the Institute of Electrical and Electronics Engineers.

**“Indemnitees”** has the meaning set forth in Section 14.19(a).

**“Independent Manager”** means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (i) a member, stockholder, equityholder, director, manager (except as the Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller, or any Affiliate of Seller; (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Seller, any member of Seller, or any Affiliate of Seller (other than for serving as Independent Manager of Seller), (iii) a Person controlling or under common control with any such stockholder, equityholder, partner, manager, customer, supplier or other like Person, or (iv) a member of the immediate family of any such member, stockholder, equityholder, director, officer, employee, manager, partner, customer, supplier or other like Person.

“**Initial Delivery Date**” means the date that Seller first delivers Facility Energy to the Point of Delivery.

“**Insurance**” means the policies of insurance as set forth in Appendix F.

“**Integration Cost Charge Code**” means a Charge Code in the Settlement Statement issued by the CAISO relating to the integration of intermittent resource generation into the CAISO grid or the management of such intermittent energy resources.

“**Interest Rate**” has the meaning set forth in Section 11.3.

“**ISA**” means the Instrument Society of America.

“**Joint Powers Agreement**” means the “Southern California Public Power Authority Joint Powers Agreement” entered into pursuant to the provisions of the Act among Buyer and Buyer’s members, dated as of November 1, 1980, as amended or modified from time to time.

“**Key Milestone**” means a Milestone for which liquidated damages are provided in Appendix I.

“**Lessor**” means any lessor of real property for the Facility pursuant to a Site Control Document.

“**Licensed Professional Engineer**” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of California and otherwise qualified to perform the work required hereunder.

“**Lien**” means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including any option, of any other Person in or with respect to any real or personal property.

“**Local Capacity Requirement Attributes**” means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

“**Losses**” has the meaning set forth in Section 13.4(f)(ii).

“**Major Maintenance Blockout**” has the meaning set forth in Section 4.4(a).

“**Milestone**” has the meaning set forth in Section 3.6(a).

“**Milestone Date**” has the meaning set forth in Section 3.6(a).

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

“**Month**” means a calendar month commencing at 00:00 Pacific Prevailing Time on the first day of such month and ending at 24:00 Pacific Prevailing Time on the last day of such month.

“**MW**” means megawatt in alternating current, or AC.

“**MWh**” means megawatt-hours.

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

“**Non-Defaulting Party**” has the meaning set forth in Section 13.4(a).

“**Notice to Proceed**” means the notice provided by Seller to EPC Contractor by which Seller authorizes EPC Contractor to begin construction of the Project without any delay or waiting periods.

“**Notifying Party**” has the meaning set forth in Section 14.3(a).

“**O&M Agreement**” means the agreement for the provision of operation and maintenance services for the Facility entered into or to be entered into by and between Seller and a Qualified Operator.

“**Outside Commercial Operation Date**” means December 31, 2015, which date shall not be subject to extension of any kind (except as provided in Section 3.5).

“**Pacific Prevailing Time**” means the local time in Riverside, California.

“**Participating Members**” means the City of Azusa, the City of Pasadena, and the City of Riverside.

“**Party**” or “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Performance Security**” means the Project Development Security or Delivery Term Security for the Facility, together or individually, as applicable.

“**Permits**” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery of Products from the Facility, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the CEQA Determinations and the Permits described in Appendix B-1.

“**Permitted Encumbrances**” means (a) the Lien of any Facility Lender on the Facility and (b) other Liens secured by, or encumbrances on, the Facility that at any time do not exceed

Ten Million Dollars (\$10,000,000) in the aggregate, and that also satisfy one or more of the following criteria: (i) any Lien approved by Buyer's Authorized Representative in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (ii) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, (iii) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, (iv) Liens of any judgment, if such judgment shall not have remained undischarged or unstayed on appeal for more than three (3) Months, (v) encumbrances consisting of zoning restrictions, licenses, easements, restrictions on the use of the Site and minor defects and irregularities in title which do not materially impair the use of the Site, the Facility or any portion thereof by Seller or materially impact the value of the Site, the Facility or any portion thereof, (vi) rights arising under the Site Control Documents, or (vii) other Liens incidental to the conduct of Seller's business or the ownership of its property that were not incurred in connection with the borrowing of money or obtaining advances of credit and do not materially detract from the value of the Facility, or any portion thereof, or its use.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

**"Point of Delivery"** means the CAISO Pricing Node (as defined in the CAISO Tariff) to be established by the CAISO at the 220kV bus of Southern California Edison Company's Windhub Substation near the existing CAISO Pricing Nodes Windhub\_2\_B1 and Windhub\_2\_N032 and to be identified by notice from Seller to Buyer prior to the Commercial Operation Date.

**"Pre-Certification Period"** has the meaning set forth in Section 6.1(e).

**"Present Value Rate"** means, at any date, the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally-recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

**"Primary Site Control Documents"** means (a) the lease to be entered into between RE Clearwater LandCo LLC and Seller and (b) the Shared Facilities Agreement.

**"Products"** means any and all Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the forwarding that are or can be produced by or are associated with the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, and renewable energy credits. The Products shall meet the standard of "portfolio content category 1" as defined by RPS Law.

**"Project Development Security"** has the meaning set forth in Section 5.7(a).

“**Proposed Purchase Notice**” has the meaning set forth in Section 14.25(b).

“**Proposed Sale Notice**” has the meaning set forth in Section 14.25(b).

“**Prudent Utility Practices**” means those practices, methods, and acts, that are commonly used by a significant portion of the solar-powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including solar-powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, WECC, as each may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices are not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.

“**Public Utilities Code**” means the Public Utilities Code of the State of California, as may be amended from time to time.

“**PUC**” means the California Public Utilities Commission and any successor thereto.

“**PUC Performance Standard**” means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

“**QRE**” has the meaning set forth in Section 8.4.

“**Qualified Buyer Assignee**” means a Participating Member, any other non-participating member of Buyer or a third party Person that is rated (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P, or (ii) “A3” or higher by Moody’s or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s.

“**Qualified Issuer**” means a Person that (a) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or (ii) “A3” or higher by Moody’s or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s; or (b) is listed on Appendix E-2, as such list may be modified by the Authorized Representatives of the Parties in accordance with Section 5.7(h).

“**Qualified Operator**” means (a) a Person reasonably acceptable to Buyer that has at least three (3) years of operating experience with at least two (2) utility-scale solar projects of 10 MW ac or higher, (b) any Person identified on Appendix H or any such Person’s Affiliates or successors or (c) any other Person reasonably acceptable to Buyer.

“**Qualified Transferee**” means a Person that (a) has financial qualifications equivalent to Seller’s financial qualifications as of the Effective Date and agrees to operate the Facility by a Qualified Operator or (b) is reasonably acceptable to Buyer.

“**Quality Assurance Program**” has the meaning set forth in Section 5.4.

**“REC” or “Renewable Energy Credit”** means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag”) for which the owner of the REC can prove that it has purchased renewable Energy.

**“Recipient Party”** has the meaning set forth in Section 14.3(a).

**“Remedial Action Plan”** has the meaning set forth in Section 3.6(a).

**“Remaining Term”** means, at any date, the remaining portion of the Delivery Term at that date without regard to any early termination of this Agreement.

**“Replacement Energy”** means (a) Energy produced by a facility other than the Facility that, at the time delivered to Buyer, is (i) both RPS Compliant and EPS Compliant, (ii) qualifies under Public Utilities Code 399.16(b)(1), and (iii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided, and (b) Capacity Rights, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Energy is being provided.

**“Replacement Price”** means the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy, or, absent such a purchase, (a) the SP-15 Price, plus (b) the price of the Environmental Attributes that would have been generated by the Facility valued at the Environmental Attributes Value, plus (c) the value of Capacity Rights, if any, equivalent to those that would have been provided by such Facility, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Buyer.

**“Requirements”** means, collectively, (a) any standards or requirements of ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, Cal-OSHA, Uniform Building Code, Uniform Plumbing Code applicable to the design or construction of the Facility, (b) any applicable local county fire department standards or codes, (c) Prudent Utility Practices, (d) all applicable Requirements of Law, (e) Seller’s Quality Assurance Program, and (f) all other requirements of this Agreement.

**“Requirement of Law”** means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

**“Resource Adequacy Attributes”** means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyer with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity, and that are

associated with the electric generating capability of the Facility or another RPS Compliant eligible renewable resource providing Replacement Energy.

“**Right of First Offer**” and “**ROFO**” have the meaning set forth in Section 14.25(a).

“**RPS Compliance**” or “**RPS Compliant**” means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource under the RPS Law and meet the requirements of Public Utilities Code Section 399.16(b)(1), as amended from time to time and any successor statute.

“**RPS Compliance Period**” means each “Compliance Period” as defined in California Public Utilities Code Section 399.30(c).

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

“**SCADA**” means the supervisory control and data acquisition system for the Facility.

“**Schedule**” or “**Scheduling**” means the actions of Seller and Buyer, their Authorized Representatives, and their Transmission Providers, if applicable, of notifying, requesting and confirming to the CAISO the amounts of Facility Energy and Replacement Energy expected to be delivered hourly at the Point of Delivery on any given date during the Delivery Term, all in the manner contemplated by the CAISO Tariff.

“**Scheduled Outage**” means any outage affecting more than ten percent (10%) of the Contract Capacity other than a Forced Outage.

“**Scheduled Outage Projection**” has the meaning set forth in Section 4.4(a).

“**Scheduler**” means the Persons conducting Scheduling for each Party. The contact information for each Party’s Scheduler is set forth in Appendix J.

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

“**Seller**” has the meaning set forth in the preamble of this Agreement.

“**Seller Excused Hour**” means an hour during which Seller is unable to produce or deliver Facility Energy from the Facility as a result of (a) a curtailment under Section 7.5, (b) a Forced Outage, (c) Buyer’s failure to perform, or (d) Force Majeure.

“**Seller Parties**” means Seller and any Affiliates of Seller executing any Ancillary Document, including any such Affiliate providing Performance Security, now or hereafter in effect.

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

“**Shared Facilities Agreement**” means that certain Cotenancy and Shared Facilities Agreement to be entered into by and among RE Columbia LLC, a Delaware limited liability company, RE Columbia Two LLC, a Delaware limited liability company, RE Yakima LLC, a Delaware limited liability company and Seller.

“**Shortfall Energy**” has the meaning set forth in Section 9.1.

“**Shortfall Liquidated Damages**” has the meaning set forth in Section 9.3.

“**Shortfall Makeup Period**” means the Contract Year following the Contract Year during which Shortfall Energy accrues.

“**Site**” means the Facility Site and the Transmission and Roadway Site.

“**Site Control**” means, with respect to the Facility, that Seller: (a) owns or leases the Facility Site; (b) is the grantee of one or more easements or rights of way with respect to the Transmission and Roadway Site, which, in each case, permits Seller to perform its obligations under this Agreement and the Ancillary Documents; (c) is the lessee under one or more site leases with respect to the Facility Site, which, in each case, permits Seller to perform its obligations under this Agreement and the Ancillary Documents; and/or (d) otherwise has demonstrable exclusive right to control the Facility Site and a non-exclusive easement or right of way with respect to the use of the Transmission and Roadway Site, in each case, so as to permit Seller to perform its obligations under this Agreement and the Ancillary Documents to which it is a party.

“**Site Control Documents**” means the Primary Site Control Documents and all other real property leases, easements, agreements, and ordinances for the Site that together establish Site Control.

“**Site Control Milestone Date**” means the date specified on Appendix I with respect to the attainment of Site Control, as may be extend pursuant to Section 3.6.

“**SP-15 Price**” means the CAISO SP-15 Trading Hub Day-Ahead Market prices, as published by the California ISO Open Access Same-time Information System. For the avoidance of doubt, the SP-15 Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

“**Special Project Entity**” means a limited liability company which:

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a

Special Project Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction.

(b) was, is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to the acquisition, development, ownership, management or operation of the Facility.

(d) has not had, does not have and will not have, any assets other than those related to the Facility;

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(f) has maintained and will maintain its financial statements, bank accounts, accounts, books, resolutions, agreements and records separate from any other Person and has filed and will file its own tax returns (except to the extent treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Seller and not as a division, department or part of any other Person;

(h) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(i) has not made and will not make loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) or made any gifts or fraudulent conveyances to any Person;

(j) has not identified and will not identify its members, or any Affiliate of any member, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person;

(k) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm’s-length transaction with an unrelated third party;

(l) on and after the Construction Start Date, will not have any obligation to indemnify and will not indemnify its managers, members, and officers, as the case may be, other than (i) the Independent Manager and (ii) natural Persons who are officers, managers, or members of Seller or any Affiliate of Seller;

(m) it has considered and shall consider the interests of its creditors in connection with all limited liability company actions;

(n) on and after the Commercial Operation Date, does not and will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents, including the provision requiring that there be an Independent Manager at all times, and has done or caused to be done and will do all things necessary to preserve its existence;

(p) has not commingled, and will not commingle, its funds or assets with those of any Person and has not participated and will not participate in any cash management system with any other Person;

(q) has held and will hold its assets in its own name and conducted and will conduct all business in its own name;

(r) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; *provided, however*, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(s) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(t) has observed and will observe all limited liability company formalities;

(u) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(v) has not acquired and will not acquire obligations or securities of its members or any Affiliate;

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(x) has maintained and used, now maintains and uses, and will maintain and use separate stationery, invoices, and checks bearing its name; such stationery, invoices, and checks utilized by it or utilized to collect its funds or pay its expenses have borne and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being its agent;

(y) has not pledged and will not pledge its assets for the benefit of any other Person;

(z) on and after the Construction Start Date, will have articles of organization, a certificate of formation or an operating agreement, as applicable, that provides that it will not, without the affirmative vote of its Independent Manager: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets (other than in connection with a transfer to a Facility Lender); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(aa) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(bb) has and will have no indebtedness other than (i) the indebtedness due to the Facility Lender providing construction financing for the Facility and any indebtedness in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, leasing and operation of the Facility and its routine administration, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Ten Million Dollars (\$10,000,000) in the aggregate, and (iv) such other liabilities that are permitted pursuant to this Agreement.

“**S&P**” means Standard & Poor’s Financial Services LLC.

“**Subcontract**” means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than Buyer, which Person is providing goods or services to Seller that are related to the performance of Seller’s obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a “subcontract” in the policies, ordinances, codes or laws with which Seller must comply pursuant

to this Agreement, or that is made with a “subcontractor” as such term is used or defined in such policies, ordinances, codes, or laws.

“**Subcontractor**” means any party to a Subcontract with Seller.

“**Successor Entity**” has the meaning set forth in Section 13.1(g).

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

“**Tax**” or “**Taxes**” means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

“**Termination Notice**” has the meaning set forth in Section 13.4(a).

“**Termination Payment**” means a payment in an amount equal to the Non-Defaulting Party’s (a) Losses, plus (b) Costs, minus (c) Gains; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

“**Test Energy**” means Facility Energy that is delivered to the Point of Delivery prior to the Commercial Operation Date.

“**Transmission and Roadway Site**” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-1 and Appendix B-2 where any transmission lines and roadways servicing the Facility are or will be located.

“**Transmission Providers**” means Persons operating the Transmission System to and from the Point of Delivery.

“**Transmission Services**” means the transmission and other services required to transmit Facility Energy to or from the Point of Delivery.

“**Transmission System**” means the facilities utilized to provide Transmission Services.

“**Unexcused Cause**” has the meaning set forth in Section 14.6(b).

“**UNFCCC**” has the meaning set forth in the definition of “Environmental Attributes.”

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

“**WREGIS**” means Western Renewable Energy Generation Information System.

“**WREGIS Certificates**” has the meaning set forth in Section 8.4.

“**WREGIS Operating Rules**” means the rules describing the operations of the WREGIS, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

**Section 1.2 Interpretation.** In this Agreement, unless a clear contrary intention appears:

- (a) time is of the essence
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person's successors and assigns (regardless of whether such Person's successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, instrument, tariff or Requirement means such agreement, document, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (g) "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term, regardless of whether words such as "without limitation" are expressly included in the applicable provision;
- (i) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including";
- (j) reference to time shall always refer to Pacific Prevailing Time; and reference to any "day" shall mean a calendar day, unless otherwise indicated; and
- (k) the term "or" is not exclusive, regardless of whether "and/or" is used in the applicable provision.

**ARTICLE II**  
**EFFECTIVE DATE, TERM, AND EARLY TERMINATION**

**Section 2.1 Effective Date.** This Agreement shall be effective on the date that both Parties have executed this Agreement (the "**Effective Date**").

**Section 2.2 Term.**

(a) **Agreement Term.** The term of this Agreement (the "**Agreement Term**") shall commence on the Effective Date and end on the last day of the Delivery Term or upon the earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** This Agreement shall have a delivery term (the "**Delivery Term**") commencing on the Initial Delivery Date and ending at 11:59 pm on the day before the twentieth (20th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

**Section 2.3 Survivability.** The provisions of this Article II, Article XII, Article XIII, Section 14.19 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries (including the provision to Buyer of Replacement Energy or Shortfall Liquidated Damages) related to any period prior to termination of this Agreement.

**Section 2.4 Early Termination.**

(a) **Early Termination by Mutual Agreement.** This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Failure to Provide Performance Security.** Buyer may terminate this Agreement if Seller fails to deliver Project Development Security within ten (10) days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.4.

(d) **Early Termination for Failure to Achieve a Key Milestone.** Buyer may terminate this Agreement pursuant to Section 3.6(c).

(e) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date, except as set forth in Section 3.5.

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer may terminate this Agreement effective upon notice to Seller if the Facility is not CEC Certified

by the date that is six (6) months following the Commercial Operation Date, *provided that* Buyer may not terminate this Agreement if Seller (i) demonstrates to Buyer's reasonable satisfaction that the failure to obtain CEC Certification is not due to any act or omission by Seller, (ii) has provided the Delivery Term Security, and (iii) is otherwise in compliance with the terms and conditions of this Agreement.

(g) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 14.6(c).

(h) **Exercise of First Right of Offer.** If Buyer accepts the Right of First Offer for any proposed sale of the Facility, this Agreement shall terminate effective upon the Closing with respect to the Right of First Offer.

(i) **[Reserved].**

(j) **Early Termination for Shortfall.** This Agreement may be terminated pursuant to Section 9.5.

(k) **Early Termination Due to Environmental Effects.** This Agreement may be terminated by Buyer pursuant to Section 3.1.

(l) **Effect of Termination.** Any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination; *provided that* the unused portion of the Project Development Security or Delivery Term Security, as applicable, if any shall be returned to Seller within ten (10) Business Days after any such termination in accordance with Section 5.7(c).

### **ARTICLE III DEVELOPMENT OF THE FACILITY**

**Section 3.1 CEQA Determinations.** Buyer shall (a) have all rights, powers and responsibilities of a responsible agency under CEQA to participate in the CEQA review of the Facility, and (b) on or before the fortieth (40th) day after the lead agency's filing of a notice of determination under CEQA, issue one of the following: (i) a notice confirming that Buyer has complied with CEQA guidelines sections 15096(a), (f), (g) and (h) by considering the CEQA Documents, adopting applicable alternatives or mitigation measures, making findings, and filing a notice of determination for its approval of the purchase of Facility Energy, or (ii) a notice that Buyer, based upon its independent review of the CEQA Documents, has decided not to approve the purchase of Facility Energy and to terminate this Agreement, due to significant adverse environmental effects from the Facility.

**Section 3.2 Project Design.** Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements, including the characteristics and other requirements for the Facility set forth in Appendix B-1, and also subject to any conditions imposed by any responsible agency as part of the CEQA review of the Facility.

**Section 3.3 Site Confirmation.** Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected and become familiar with the Site and its surface

physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer. The foregoing shall not restrict Seller's right to claim Force Majeure hereunder to the extent the requirements therefor hereunder are satisfied.

**Section 3.4 Contract Provisions.** Seller shall cause to be included in each Subcontract provisions that provide:

(a) Buyer with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to reasonable safety precautions) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and

(b) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof.

**Section 3.5 Certification of Commercial Operation Date.** Seller shall provide Buyer with notice when Seller believes that all conditions precedent to achieving Commercial Operation of a Facility as specified in the definition of "**Commercial Operation**" have been satisfied. Buyer shall either accept the notice, or reject the notice if reasonable cause exists, provided that Buyer shall not unreasonably withhold, delay or condition any acceptance of such notice, and in any event shall provide in reasonable detail a written description of the reasons for any rejection. Buyer shall in all cases respond to any such notice within ten (10) Business Days after delivery by Seller and shall be deemed to have accepted such notice if Buyer fails to respond in such time. If Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. The Commercial Operation Date shall be deemed to relate back to the date of any Seller notice of Commercial Operation that is accepted (or deemed accepted) by Buyer. So long as Seller provides, in good faith, notice to Buyer of the achievement of Commercial Operation prior to the Outside Commercial Operation Date, Buyer may not terminate this Agreement under Section 2.4(e) for failure to achieve the Commercial Operation Milestone under Section 3.6 so long as (a) Buyer either (i) accepts such notice or (ii) rejects such notice due to minor defects or deficiencies that do not affect the ability of the Facility to be placed in service and operated in accordance with this Agreement, and (b) Seller promptly corrects such minor defects or deficiencies identified by Buyer. In no event shall any

extension of the Outside Commercial Operation Date under this Section 3.5 affect the amount of the Contract Price, notwithstanding any tax benefits lost as a result of the delay of the Commercial Operation Date.

### **Section 3.6 Milestone Schedule.**

(a) Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each milestone, a "**Milestone**" and each date, a "**Milestone Date**"). Until the Commercial Operation Date, Seller shall provide Buyer a report, which report shall be provided on a quarterly basis until the date that is six (6) months prior to the scheduled Commercial Operation Date, at which time, such reports shall be provided on a Monthly basis, and which shall include (i) a description of the Site plan for the Facility, (ii) a description of any planned changes to the Facility or Site plan since the previously delivered report, (iii) a bar chart schedule showing progress to achieving the remaining Milestones, (iv) a chart showing the critical path schedule of major items and activities, (v) a summary of activities at the Facility during the previous Month, (vi) a forecast of activities during the then-current Month, (vii) a list of any issues that could impact Seller's achievement of Milestones by the applicable Milestone Dates, and (viii) pictures, in sufficient quantity and of appropriate detail, documenting construction and startup progress with respect to the Facility. If Seller anticipates that it will not achieve a Milestone by the applicable Milestone Date (as such date may be extended pursuant to this Section 3.6), Seller shall promptly prepare and deliver to Buyer a remedial action plan ("**Remedial Action Plan**") which shall set forth (a) the anticipated period of delay, (b) the basis for such delay, (c) an outline of the steps that Seller is taking to address the delay, (d) a proposed revised date for achievement of the applicable Milestone and (e) such other information and in such detail as may be reasonably requested by Buyer. Except as set forth in Section 3.6(c), Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan *provided, however*, that the foregoing shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any other Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Milestone.

(b) Each Milestone Date (other than the Outside Commercial Operation Date) shall be extended, on a day-for-day basis to the extent Seller is unavoidably delayed in achieving such Milestone due to (i) the failure by Buyer to perform any covenant or obligation under this Agreement or (ii) Force Majeure.

(c) If Seller fails to achieve any Key Milestone by the Milestone Date (as extended pursuant to Section 3.6(b)), Seller shall pay liquidated damages to Buyer in an amount equal to (i) the number of days between the Milestone Date and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer), multiplied by (ii) the applicable daily liquidated damage amount set forth for such Key Milestone in Appendix I (the "**Daily Delay Damages**"), subject to a maximum amount for any Key Milestone equal to the daily damage amount in (ii) above multiplied by three hundred sixty-five (365) days, at which point Buyer shall have the right in its sole discretion, to either (A) terminate this Agreement, or (B) allow Seller to continue to pay liquidated damages to Buyer, during which time Buyer shall not terminate the Agreement. If Seller, notwithstanding having failed to timely achieve any other Key Milestone, is able to achieve the Commercial Operation Date on or before the

Guaranteed Commercial Operation Date (and prior to the exercise by Buyer of its termination right hereunder), then Buyer shall refund to Seller any amounts previously paid as Daily Delay Damages.

(d) In no event shall the Commercial Operation Date be extended beyond the Outside Commercial Operation Date, which date shall not be subject to extension except by mutual agreement of the Parties.

(e) Seller may change the Guaranteed Commercial Operation Date to a date that is earlier than the then-scheduled Guaranteed Commercial Operation Date by providing Buyer with notice at least six (6) months prior to the new Guaranteed Commercial Operation Date.

(f) The damages that Buyer would incur due to Seller's failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyer's sole right and remedy, other than termination of the Agreement, for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Key Milestone.

**Section 3.7 Decommissioning and Other Costs.** Unless a Closing occurs pursuant to the ROFO, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of such Facility without regard to the timing or cause of the decommissioning or demolition.

#### **ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY**

**Section 4.1 General Operational Requirements.** Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements and (ii) in a manner that is reasonably likely to achieve the Annual Contract Quantity and result in a useful life for the Facility of not less than the Delivery Term;

(b) At its sole expense, operate and maintain the Facility using a Qualified Operator in accordance with the Requirements;

(c) Use qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(d) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System; and

(e) Comply with operating and maintenance standards recommended or required by the Facility's equipment suppliers.

**Section 4.2 Operation and Maintenance Plan.** Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

**Section 4.3 Environmental Credits.** Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law.

**Section 4.4 Scheduled Outage.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified times of each calendar year (such periods, the "**Major Maintenance Blockout**") in accordance with Prudent Utility Practices and this Section 4.4; *provided* that the Major Maintenance Blockout during any calendar year shall not exceed eighty-four (84) days, which number shall be prorated (i) for the calendar year during which the Commercial Operation Date occurs based on the number of days remaining in such calendar year as of the Commercial Operation Date, and (ii) the calendar year during which the Delivery Term expires or terminates based on the number of days occurring in such calendar year before such expiration or termination date. No later than thirty (30) days prior to the anticipated Commercial Operation Date and the commencement of each calendar year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices; *provided* that Seller shall be permitted to perform scheduled and unscheduled maintenance on the Facility during Major Maintenance Blockouts during such hours in which solar irradiance levels are insufficient to permit the production of Energy if such maintenance is permitted under the CAISO Tariff and conducted in accordance with all applicable Requirements (including, for avoidance of doubt, the requirements of the Transmission Provider). No later than thirty (30) days prior to the anticipated Commercial Operation Date and the commencement of each calendar year thereafter, Seller shall provide Buyer with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "**Scheduled Outage Projection**") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer's Authorized Representative consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated Facility capacity, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Authorized Representative of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally-scheduled date of the Scheduled Outage. Seller shall use commercially

reasonable efforts to accommodate reasonable requests of Buyer or Buyer's Authorized Representative with respect to the timing of Scheduled Outages and shall, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage affecting at least ten percent (10%) of the Contract Capacity, to the extent practicable, Seller shall notify Buyer within two (2) hours after the commencement of the Forced Outage and, in any event, within seven (7) days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

## **ARTICLE V COMPLIANCE DURING OPERATIONS; GUARANTEES**

**Section 5.1 Guarantees.** Seller warrants and guarantees that it will perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in accordance with the Requirements. Seller warrants that, at the Commercial Operation Date, the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction. Seller further warrants that, throughout the Delivery Term: (a) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (b) the Facility will be designed, constructed and tested in compliance with the Requirements. Seller also warrants and guarantees that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in compliance with all Requirements applicable to the Facility as of the Effective Date. Without limiting the foregoing, Seller shall promptly repair and/or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall exercise commercially reasonable efforts to timely undertake all updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software, required by Prudent Utility Practice. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

**Section 5.2 Buyer's Right to Monitor in General.** Upon no less than ten (10) Business Days' notice to Seller, Buyer shall have the right, and Seller shall permit Buyer and its Authorized Representative, advisors, engineers and consultants, to observe, inspect, monitor, and have a representative present to witness the operations and activities at each Site before and after the applicable Commercial Operation Date, including (a) reviewing and monitoring all initial performance tests during Facility start-up and all material tests required under the Subcontracts to be performed prior to each Milestone, and (b) performing such detailed examinations and inspections as, in the judgment of Buyer, are appropriate and advisable to determine that the

Facility equipment and ancillary components of the Facility have been installed in accordance with the Requirements; *provided, however*, that ten (10) Business Days' notice shall not be required if Buyer's inspection and monitoring is due to an emergency situation at the Site, a Facility curtailment, or any other occurrence causing an operational concern to Buyer with respect to the Facility, in which case Buyer shall provide as much advance notice as is practicable under the circumstances. Seller shall, or shall cause its contractors to, provide at least fifteen (15) Business Days' notice to Buyer before any test referenced in the previous sentence is scheduled to begin. The presence of Buyer and Buyer's Authorized Representative on the Site shall be at Buyer's sole risk and expense. While at the Site, Buyer and Buyer's Authorized Representative shall (i) comply with all applicable Requirements and Seller's written Site safety rules and (ii) not interfere with Seller's normal commercial operations. Seller shall cause its personnel, consultants, and contractors to be available to Buyer and its Authorized Representatives, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing, performance, operation, or maintenance thereof. Buyer shall be limited to no more than ten (10) such visits to each Facility each Contract Year, except that visits made by Buyer due to emergency situations, Facility curtailments, or any occurrence causing an operational concern to Buyer with respect to the Facility shall not count toward such ten (10) visit limit.

**Section 5.3 Effect of Review by Buyer.** Any review by Buyer or Buyer's Authorized Representative of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer or Buyer's Authorized Representative of the Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

**Section 5.4 Quality Assurance Program.** Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as Appendix G, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

**Section 5.5 No Liens.** Except as otherwise permitted by this Agreement, the Facility shall be owned by Seller during the Agreement Term. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer's Authorized Representative.

**Section 5.6 Reporting and Information.** Seller shall provide to Buyer (a) Monthly reports of the operation of each Facility, which shall include (i) a performance summary of the Month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor, and availability, (ii) descriptions of the weather, reasons for any downtime, maintenance or repairs, and Curtailment Periods and other curtailment events during the applicable Month, and (iii) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operations of the Facility, as Buyer's Authorized Representative may, from time to time, reasonably request.

**Section 5.7 Performance Security.**

(a) Within ten (10) days after the Effective Date, Seller shall furnish to Buyer one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E-1, cash (to be held in an escrow), or a combination of the two, in the aggregate amount of Nine Hundred Seventy Thousand Dollars (\$970,000), which shall guarantee Seller's obligations under this Agreement (the "**Project Development Security**"). Seller shall maintain the Project Development Security for each Facility until Seller posts the Delivery Term Security for such Facility pursuant to Section 5.7(b), or until Buyer is required to return the Project Development Security under Section 5.7(c) below.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E-1, cash (to be held in an escrow account), or a combination of the two, and in the aggregate amount of Three Million, One Hundred Fifty Thousand Dollars (\$3,150,000), which, in each case, shall guarantee Seller's obligations under this Agreement ("**Delivery Term Security**"); *provided* that Seller may elect to apply the Project Development Security toward the Delivery Term Security. From and after the Commercial Operation Date, Seller shall maintain the Delivery Term Security until the end of the Delivery Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.7(c) below.

(c) Buyer shall return the unused portion of the (i) Project Development Security, if any, to Seller within ten (10) Business Days after (A) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security toward the Delivery Term Security, or (B) the effective date of any earlier termination, so long as damages are no longer due and owing to Buyer, and (ii) Delivery Term Security, if any, to Seller promptly after the following have occurred: (A) the Agreement Term has ended, and (B) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(d) Buyer may draw on the Performance Security (i) at any time following the accrual of Daily Delay Damages hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to pay Buyer the Shortfall Liquidated Damages prior to the end of the Shortfall Makeup Period as provided in Section 9.3, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder in the amount of such unpaid payment; *provided* that, in the case of a draw under clause (iii), any such amount shall have been invoiced to Seller, shall be past due, and shall not be the subject of a good faith dispute between the Parties. Within five (5)

Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.7(a) or Section 5.7(b).

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event involving an issuer of the Performance Security within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, Buyer may require that Seller replace the Performance Security from the Person that has suffered the Downgrade Event in accordance with Section 5.7(g).

(f) Seller shall provide replacement Performance Security in accordance with Section 5.7(g) after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes bankrupt.

(g) If replacement Performance Security is required due to (i) a Downgrade Event, or (ii) upon the occurrence of any of the events described in Section 5.7(f), then Seller shall, within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies, Seller of the need for replacement Performance Security, provide, or cause to be provided, (1) a letter of credit substantially in the form of Appendix E-1 from a Qualified Issuer, or (2) cash (to be held in an escrow account), in each event, in the amount required under this Section 5.7.

(h) Buyer shall notify Seller within fifteen (15) Business Days after (i) Buyer becomes aware of any Person listed on Appendix E-2 that experiences a Downgrade Event and therefore are no longer Qualified Issuer, or (ii) Buyer has elected to terminate any relationship with such Person pursuant to directives from any Governmental Authorities applicable to Buyer, after which the Parties' Authorized Representatives shall promptly thereafter coordinate to remove any Person with whom Buyer has terminated its relationship, or who has experienced a Downgrade Event, from Appendix E-2 and identify and mutually agree to amend Appendix E-2 to include additional Qualified Issuers. The Authorized Representatives of the Parties may also periodically identify and mutually agree to amend Appendix E-2 to include different Qualified Issuers.

(i) Seller shall, from time to time as requested by Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Requirements of Law the Performance Security (including any Ancillary Documents required therefor) and the rights, Liens and priorities of Buyer with respect to such Performance Security.

(j) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

**ARTICLE VI  
PURCHASE AND SALE OF PRODUCT**

**Section 6.1 Purchases by Buyer.** With respect to each Facility:

(a) Prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Test Energy for the Contract Price set forth in Section 1 of Appendix A.

(b) Except as set forth in Section 6.1(e), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Facility Energy (other than Excess Energy) and Replacement Energy at the Contract Price set forth in Section 2 of Appendix A.

(c) Except as set forth in Section 6.1(e), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Excess Energy at the Contract Price set forth in Section 3 of Appendix A.

(d) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Facility Energy and Replacement Energy that cannot be bid or prescheduled into the CAISO at the Contract Price set forth in Sections 2 and 3 of Appendix A, as applicable.

(e) Notwithstanding the provisions of Section 6.1(a) through Section 6.1(d), during the period of time between the Initial Delivery Date and the day that is one (1) day following the date upon which Seller delivers evidence to Buyer that the Facility is CEC Certified (the "**Pre-Certification Period**"), Buyer shall have the right to retain a portion of any payment to be made to Seller under Sections 6.1(a) through Section 6.1(d) in an amount equal to the difference between (i) the applicable Contract Price, and (ii) SP-15 Price for the respective hours in which Facility Energy was generated. Buyer shall release such retained amount, without interest of any kind, within thirty (30) days following Buyer's receipt from Seller of the CEC certificate confirming that the Facility is CEC Certified, but only to the extent that Buyer is able to apply the RECs generated by the Facility during the Pre-Certification Period towards compliance with Buyer's obligations under RPS Law and the requirements of Public Utilities Code Section 399.16(b)(1) to obtain a "portfolio content category 1" eligible resource.

**Section 6.2 Seller's Failure.** Except as provided in Article IX, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Unless excused by Force Majeure or Buyer's failure to perform, if Seller sells all or any part of the Products required to be delivered by Seller under this Article VI, Article VIII or Article X to a third party, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Products not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt written notice of the Replacement Price together with back-up documentation.

**Section 6.3 Buyer's Failure.** Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy required to be received by Buyer under this Article VI, Article VIII, or Article X, Buyer shall pay Cover Damages, on the date payment would otherwise be due to Seller; *provided that* Seller shall use commercially reasonable efforts to resell any Facility Energy not able to be received by Buyer. "**Cover Damages**" means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Energy not received by Buyer. Seller shall provide Buyer prompt written notice of the Cover Damages together with back-up documentation.

**Section 6.4 Nature of Remedies.** The Parties acknowledge and agree that the damages that Buyer would incur as a result of Seller's failure as described in Section 6.2 or that Seller would incur as a result of Buyer's failure as described in Section 6.3 would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances, and the liquidated damages set forth in Section 6.2 and Section 6.3 are fair and reasonable calculations of such damages. To the extent permitted by law, (a) the remedy set forth in Section 6.2 is in addition to, and not in lieu of, any other right or remedy of Buyer under this Agreement or otherwise, for failure of Seller to sell and deliver the Products as and when required by this Agreement, and (b) the remedy set forth in Section 6.3 is in addition to, and not in lieu of, any other right or remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement.

## ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

### Section 7.1 In General.

(a) Seller shall use all reasonable efforts consistent with Prudent Utility Practices and the other provisions of this Agreement to maximize the output of Facility Energy from the Facility. Subject to Buyer's role as Seller's Scheduling Coordinator for the Facility, Seller shall arrange for, and shall bear all risks and benefits associated with, delivery of all Facility Energy and Replacement Energy to and at the Point of Delivery, including the arrangement of and payment for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Test Energy, Facility Energy and Replacement Energy to and at the Point of Delivery at the CAISO grid, including interconnection costs, transmission losses, and the transmission of Facility Energy, and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery; *provided that* Replacement Energy may be delivered at alternative locations as may be mutually agreed by the Parties.

(b) Buyer shall be obligated to pay for all Facility Energy and Replacement Energy delivered to the Point of Delivery, and Buyer shall arrange for, and shall bear all risks associated with, acceptance and transmission of Facility Energy and Replacement Energy from the Point of Delivery, including the arrangement of and payment for Transmission Services from the Point of Delivery at the CAISO grid, and shall Schedule or arrange for Scheduling and

transmission services with its Transmission Providers to deliver Facility Energy and Replacement Energy to Buyer's destination, including charges related to control area services, inadvertent energy flows, transmission losses, the transmission of Facility Energy and Replacement Energy, and otherwise associated with the management of Buyer's load.

**Section 7.2 Forecasting and Scheduling of Energy.** The Authorized Representatives of Buyer and Seller may, following the Effective Date, mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 7.2, by written agreement of both Authorized Representatives in order to comply with all applicable Requirements and requirements of the Transmission Provider, CAISO, NERC, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to such forecasting or Scheduling procedures.

(a) Seller hereby designates Buyer or Buyer's designee to act as Seller's Scheduling Coordinator to effect the Scheduling of Facility Energy and Replacement Energy to and at the Point of Delivery, and Buyer (for itself or its designee) hereby accepts the position of Scheduling Coordinator for the Facility. In such capacity, Buyer shall be responsible for and pay all fees, charges, and other costs necessary to Schedule the receipt of Facility Energy and Replacement Energy from the Point of Delivery. Buyer shall Schedule all Facility Energy and Replacement Energy in a reasonable and prudent manner in accordance with the CAISO Tariff and the Scheduling and forecasting procedures provided in or developed under this Section 7.2, based on the then-most-current forecast of energy provided under the CAISO Intermittent Resource Protocol.

(b) Seller shall submit non-binding forecasts, and any updates to such forecasts, to Buyer or Buyer's Authorized Representative based on the most current forecast of Facility Energy and Replacement Energy. All Scheduling shall be performed in accordance with the applicable CAISO, NERC and WECC operating policies, criteria, and any other applicable guidelines, and shall be subject to approval by Buyer. Seller, at its own cost, shall also install metering, telemetry and control equipment so as to be able to provide Facility Energy to the Point of Delivery and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders.

(i) At least one-hundred twenty (120) days before (a) the scheduled Commercial Operation Date and (b) the beginning of each Contract Year for such Facility, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each Month's average-day deliveries of Facility Energy and Replacement Energy from such Facility, for the following eighteen (18) Months.

(ii) No later than sixty (60) days before the beginning of each Month during the Delivery Term, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Energy, for each such Month.

(iii) No later than ten (10) Business Days before the beginning of each Month during the Delivery Term, Seller or Seller's designee shall provide, or cause to be

provided, to Buyer a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Energy for the following Month.

(iv) On the first Business Day of each calendar week during the Delivery Term, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average deliveries of Facility Energy and Replacement Energy, by hour, for the following fourteen (14) days.

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy and Replacement Energy during the Delivery Term, Seller or Seller's designee shall provide Buyer or Buyer's Authorized Representative with a copy of a non-binding hourly forecast of deliveries of Facility Energy and Replacement Energy for each hour of the immediately succeeding day. A forecast provided a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer or Buyer's Authorized Representative with a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by the Buyer or Buyer's Authorized Representatives, Seller shall provide or cause to be provided to Buyer and Buyer's Authorized Representatives a non-binding preschedule forecast of Facility Energy and Replacement Energy via email. The pre-scheduled amounts of Facility Energy and Replacement Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Facility Energy and Replacement Energy at the time. A forecast provided a day prior to any non-Business Day shall include forecasts for the next day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide Buyer and Buyer's Authorized Representatives with a copy of any and all updates to such forecast of Facility's availability from the then-current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the preschedule plan submitted to Buyer and Buyer's Authorized Representatives.

(vii) In order to allow Buyer to make Schedule changes in conformity with the CAISO Scheduling deadline, Seller shall notify Buyer or Buyer's Authorized Representative via email, telephone, or other mutually acceptable method, of any hourly changes due to a change in Facility availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify Buyer or Buyer's Authorized Representative of other unanticipated changes in availability by email or telephone as promptly as reasonably possible so that an outage report can be completed with the CAISO. Any notice delivered under this Section 7.2(b)(vii) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify Buyer that the outage has ended, the cause of the outage, and the actions

taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

(c) Throughout the Delivery Term of each Facility, Seller shall provide to Buyer the following data on a real-time basis:

(i) Read-only access to meteorological and related solar measurements, megawatt capacity and any other Facility availability information required in accordance with CAISO Intermittent Resource Protocol requirements;

(ii) Read-only access to Energy output information collected by the SCADA system for the Facility; *provided* that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide Energy output information and meteorological measurements to Buyer in four (4)-second intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal; and

(iii) Read-only access to all Electric Metering Devices.

(d) Buyer is authorized to prepare and provide Buyer's Authorized Representative, Buyer's real time operators, and Buyer's Scheduler with continuously updated non-binding hourly forecasts of deliveries of Facility Energy and Replacement Energy for each hour of the succeeding twenty four (24)-hour period, in either electronic format, via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's real time operators, and Buyer's Scheduler, or via email in the form of an excel spreadsheet (or any combination thereof), transmitted on an hourly basis. Seller shall reasonably cooperate with Buyer to attempt to optimize the estimates for such time period two (2) hours prior to such forecasts. Seller shall reasonably cooperate with Buyer to enable such forecasts to be prepared in accordance with mutually agreed upon communications protocols as they are implemented or upgraded from time to time.

### **Section 7.3 CAISO Cost Allocation.**

(a) Buyer, as Scheduling Coordinator, shall be financially responsible for all charges, costs, payments and credits on all Settlements Statements issued by the CAISO except as provided in Section 7.3(b) and Section 7.3(c).

(b) Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement (i) incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement, (ii) incurred by Buyer because of any scheduled outages for which insufficient notice has been provided under this Agreement, or (iii) to the extent arising as a result of Seller's failure to comply with a Curtailment Order under Section 7.5 if such failure results in incremental costs to Buyer.

(c) In addition to any costs or charges for which Seller is liable pursuant to this Agreement, Seller shall also be liable for all charges, costs, payments and credits on all Settlement Statements that meet all of the following four criteria ("*CAISO Integration Amounts*") up to the CAISO Integration Amounts Cost Cap:

- (i) identified as an Integration Cost Charge Code as specified on Appendix M of this Agreement;
- (ii) assessed by the CAISO to Buyer in its capacity as Scheduling Coordinator for the Project;
- (iii) result in a charge on Buyer's Settlement Statement from the CAISO; and
- (iv) are not already charged to Seller under another provision of the Agreement.

For the avoidance of doubt, CAISO Integration Amounts do not include any CAISO or other costs or charges associated with Buyer's receipt of Facility Energy or Replacement Energy at the Point of Delivery or the Scheduling or transmission of Energy from and away from the Point of Delivery (including any costs or charges associated with imbalances from forward Schedules submitted to CAISO), all of which shall be the sole responsibility of Buyer (subject to Section 7.3(b)).

(d) The Parties shall cooperate to establish a protocol (the "*CAISO Integration Amounts Protocol*") for determining which Charge Codes satisfy the definition of an Integration Cost Charge Code and shall update Appendix M from time to time as needed to reflect a complete list of such Charge Codes.

(e) Subject to the CAISO Integration Amounts Cost Cap, CAISO Integration Amounts shall be invoiced in accordance with Article XI and amounts owing to Buyer shall offset against amounts owing to Seller.

**Section 7.4 [Reserved].**

**Section 7.5 Curtailment.**

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery immediately upon notice from Buyer, the CAISO, a Transmission Provider, or any balancing authority or reliability entity (i) during Curtailment Periods, or (ii) in the case of actual or anticipated System Emergencies or over-generation (as defined in the CAISO Tariff) affecting Buyer. If required by the CAISO, a Transmission Provider, or any balancing authority or reliability entity, Seller shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the SCADA system of Seller. Buyer shall not be obligated to pay Seller for the amount of reduced Facility Energy during a Curtailment Period or a curtailment directed by Buyer pursuant to clause (ii) of this Section 7.5(a) except as provided under Section 7.5(c) below.

(b) In addition to the curtailments described in Section 7.5(a), Buyer shall have the right to curtail deliveries of Facility Energy at any time and for the duration specified by Buyer. Buyer shall provide a minimum of ten (10) minutes' notice to Seller of Buyer's request for curtailment under this Section 7.5(b), and Seller shall comply with such request in

accordance with Prudent Utility Practices. In its curtailment notice to Seller, Buyer shall provide Seller the duration of the curtailment period, which shall be for a minimum of thirty (30) minutes, and the time when Buyer requests that Seller resume delivery of Facility Energy to Buyer. To the extent Buyer requests any change in the duration of the requested curtailment period, Seller shall effectuate any such change no later than ten (10) minutes' notice from Buyer's notification to Seller of the proposed change to curtailment. Seller shall respond to Buyer's curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Buyer shall pay Seller the Contract Price for any Deemed Generated Energy during any curtailment under this Section 7.5(b); *provided, however*, Seller shall use commercially reasonable efforts to sell any such Deemed Generated Energy to third parties should Buyer be unable to receive such Deemed Generated Energy and to the extent permitted under the CAISO Tariff. To the extent such Deemed Generated Energy is sold to a third party, (i) Buyer's obligation to pay the Contract Price under this Section 7.5(b) shall be reduced by an amount equal to the net proceeds Seller receives from such sales of Deemed Generated Energy (after subtracting any scheduling fees, wheeling charges, and other associated costs, fees, and reasonable expenses incurred in connection with such sales), and (ii) any Environmental Attributes not sold with such Deemed Generated Energy shall be delivered to Buyer at no additional cost to Buyer.

(c) The Parties shall develop procedures to calculate the estimated amount of curtailed Energy that would have been delivered during a curtailment event under this Section 7.5 based on historical Facility data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data (the "*Deemed Generated Energy*"). The calculation shall be subject to review and approval by Buyer. The Parties acknowledge and agree that Deemed Generated Energy shall include reduced Facility Energy during a Curtailment Period or a curtailment directed by Buyer pursuant to clause (ii) of Section 7.5(a) only if, and only to the extent that, such curtailment results from: (A) the failure by Buyer to perform its obligations hereunder as the Facility Scheduling Coordinator or (B) the manner in which Buyer Schedules Facility Energy.

(d) Seller shall be responsible for any costs or charges incurred by Buyer resulting from Seller's failure to comply with this Section 7.5, and any such costs or charges shall not count toward the CAISO Integration Amounts Cost Cap.

**Section 7.6 No Payment.** Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 7.5.

**Section 7.7 Title; Risk of Loss.** As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of all Energy at and from the Point of Delivery. Seller warrants that it will deliver all Energy and all of the associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and all of the associated Products shall pass from Seller to Buyer at the Point of Delivery.

## **Section 7.8 RPS and EPS Compliance.**

(a) Seller warrants and guarantees that, from the time it receives notice from the CEC that the Facility is CEC Certified, and at all times thereafter until the expiration or earlier termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant.

(b) Notwithstanding Section 7.8(a), if a Change in Law occurs after the Commercial Operation Date that causes the Facility to cease to be both RPS Compliant and EPS Compliant, Seller shall use commercially reasonable efforts to comply with such Change in Law, which efforts shall include the incurrence of up to Three Hundred Thousand Dollars (\$300,000.00) in any Contract Year, or One Million, Two Hundred Thousand Dollars (\$1,200,000) in the aggregate over the Agreement Term in costs and expenses, including without limitation, registration fees, volumetric expenses, license renewal fees, external consultant fees, and capital costs, but excluding lobbying activities, to cause the Facility to be RPS Compliant and EPS Compliant. If notwithstanding such commercially reasonable efforts, the Facility is not RPS Compliant or EPC Compliant, Buyer shall remain obligated to purchase the Products at the full Contract Price.

(c) From time to time and at any time requested by Buyer's Authorized Representative, Seller will furnish to Buyer, Governmental Authorities, or other Persons designated by Buyer, all certificates and other documentation reasonably requested by Buyer's Authorized Representative in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant and EPS Compliant.

## **ARTICLE VIII ENVIRONMENTAL ATTRIBUTES**

**Section 8.1 Transfer of Environmental Attributes.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term associated with the Facility Energy and any Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. The consideration for the transfer of Environmental Attributes is contained within the Contract Price.

**Section 8.2 Reporting of Ownership of Environmental Attributes.** During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

**Section 8.3 Environmental Attributes.** Upon request by Buyer's Authorized Representatives, Seller shall take all actions and execute all documents or instruments necessary under applicable law, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

**Section 8.4 Use of Accounting System to Transfer Environmental Attributes.** In furtherance and not in limitation of Section 8.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall register with WREGIS (or any successor system) to evidence the transfer of any Environmental Attributes considered RECs under applicable law or any voluntary program ("*WREGIS Certificates*") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols and WREGIS Operating Rules and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, Seller shall transfer WREGIS Certificates from Seller's WREGIS account to not more than three (3) WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Facility, maintaining its account, acquiring and arranging for a Qualified Reporting Entity ("*QRE*") and any applicable QRE agreements, and transferring WREGIS Certificates to Buyer, Buyer's Authorized Representative, or any other designees. Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer's Authorized Representative or its designees for purposes of any RECs attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, if any, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of RECs under this Agreement by delivering to Buyer an attestation in substantially the form attached as Appendix D for the RECs associated with Facility Energy, or Replacement Energy, if any, measured in whole MWh, or by such other method as Buyer shall designate.

**Section 8.5 Further Assurances.** Pursuant to Section 8.4, if WREGIS (or any successor thereto) is not in operation, or for Environmental Attributes to which WREGIS does not apply, Seller shall document the production of Environmental Attributes other than RECs by delivering with each invoice to Buyer an attestation for the amount of such Environmental Attributes associated with Facility Energy or included with Replacement Energy, if any, for the preceding Month in the form of the attestation set forth as Appendix D. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, each Party shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be

recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

## **ARTICLE IX MAKEUP OF SHORTFALL ENERGY**

**Section 9.1 Makeup of Shortfall.** Within thirty (30) days after the end of each Contract Year for each Facility, Seller shall provide Buyer with a calculation of Facility Energy for such Contract Year. If Seller fails during any Contract Year to deliver Facility Energy in an amount equal to the Guaranteed Generation for the Facility, then Seller shall make up the shortfall of Facility Energy ("**Shortfall Energy**") in accordance with this Article IX.

**Section 9.2 Replacement Energy.** During the Shortfall Makeup Period, the amount of Shortfall Energy shall first be reduced by the amount of any (a) Facility Energy or Deemed Generated Energy from the Facility delivered or deemed to be delivered above the Guaranteed Generation from the Facility during the applicable Shortfall Makeup Period, and (b) Replacement Energy delivered by Seller during the Shortfall Makeup Period, which Replacement Energy shall be delivered to the Point of Delivery or other point of delivery designated by Buyer (which point of delivery shall be deemed the "Point of Delivery" for such Replacement Energy for purposes of Article VII and the other Scheduling and delivery provisions hereof) and on a delivery schedule mutually agreed to by Seller and Buyer's Authorized Representative. To the extent Seller is unable to deliver or provide sufficient Facility Energy, Deemed Generated Energy, or Replacement Energy to make up the remaining Shortfall Energy, then Seller shall, at the end of the Shortfall Makeup Period, pay Buyer liquidated damages in accordance with Section 9.3. Notwithstanding the foregoing, at the end of each RPS Compliance Period during the Delivery Term, if there is any Shortfall Energy at such time, Seller shall pay Buyer liquidated damages in accordance with Section 9.3 for the amount of Shortfall Energy in the last calendar year of such RPS Compliance Period.

**Section 9.3 Shortfall Liquidated Damages.** If Seller is required to pay liquidated damages pursuant to Section 9.2, such liquidated damages shall be equal to an amount for each MWh of remaining Shortfall Energy equal to the positive difference, if any, obtained by subtracting (a) the Contract Price specified in Section 2 of Appendix A from (b) the Replacement Price ("**Shortfall Liquidated Damages**"). If Seller fails to pay Buyer the Shortfall Liquidated Damages prior to the end of the Shortfall Makeup Period, Buyer shall have the right, as early as the last day of such Shortfall Makeup Period, to draw the amount of Shortfall Liquidated Damages owed to Buyer from the Delivery Term Security. The Shortfall Liquidated Damages payable under this Section 9.3 shall be payable in lieu of actual damages and shall be Buyer's sole remedy, and Seller's sole liability, for Seller's failure to achieve the Guaranteed Generation and deliver Replacement Energy in the amount of the Shortfall Energy, except that the foregoing shall not limit Buyer's right to terminate this Agreement under Section 9.5 or exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after the accrual of such Shortfall Energy. The Parties acknowledge and agree that (1) the damages that Buyer would incur due to shortfalls in Facility Energy would be difficult or impossible to predict with certainty, and (2) it is impractical and difficult to assess actual damages in those circumstances and, therefore, Shortfall Liquidated Damages are a fair and reasonable calculation of such damages.

**Section 9.4 Availability Requirement.** Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable.

**Section 9.5 Shortfall Energy Termination.** If Seller fails during any two consecutive Contract Years to deliver at least sixty-two and one half percent (62.5%) of the Guaranteed Generation then Buyer, in its sole discretion, may within thirty (30) days after the end of such Contract Year, elect to either (a) collect Shortfall Liquidated Damages for the Shortfall Energy pursuant to Section 9.3 and terminate this Agreement with respect to such Facility, *provided* that such termination will be without further liability to either Party; or (b) allow Seller to cure such failure by providing Buyer with Replacement Energy or Shortfall Liquidated Damages as described in Section 9.2 and Section 9.3.

## **ARTICLE X CAPACITY RIGHTS**

**Section 10.1 Capacity Rights.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of Seller's rights, title and interest in and to the Capacity Rights. The consideration for the transfer of Capacity Rights, if any, is contained within the Contract Price. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

**Section 10.2 Representation Regarding Ownership of Capacity Rights.** Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. During the Agreement Term, Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at Buyer's own risk and expense, report to any Person that the Capacity Rights belong to it. Seller makes no representations, warranties or covenants to Buyer, either expressed or implied, regarding the current or future characterization or treatment of the Capacity Rights under any Requirement of Law.

**Section 10.3 Further Assurances.** Seller shall execute and deliver such documents and instruments and take such other action as required by the CAISO and as Buyer's Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

## **ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES**

**Section 11.1 Billing and Payment.** Billing and payment for all Products shall be as set forth in this Article XI.

## **Section 11.2 Calculation of Energy Delivered; Invoices and Payment.**

(a) Not later than the tenth (10th) day of each Month, commencing with the next Month following the Month in which Facility Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount due to Seller for Facility Energy, Capacity Rights and Environmental Attributes. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment or services covered by the invoices, and shall be sent to the address set forth in Appendix J or such other address as Buyer may provide to Seller. Seller shall separately provide in such invoice Seller's computation of any allocation for Replacement Energy delivered by Seller and taken by Buyer under this Agreement during the preceding Month, any Deemed Generated Energy calculated during the preceding Month (including any supporting documentation associated therewith) and any other amounts due to Seller, including amounts due under Section 6.3 or Section 7.3. Seller shall also separately designate in such invoice the generation of Excess Energy, if any. Seller shall also provide Buyer with a summary of the calculations pursuant to Section 6.2, and in the case of Replacement Energy, the amount in MWh actually supplied by Seller pursuant to Section 9.2.

(b) Subject to Section 11.2(c) and Section 11.3, not later than the thirtieth (30th) day after receipt by Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such Monthly invoice.

(c) With respect to Deemed Generated Energy, within thirty (30) days after receipt of an invoice from Buyer, Buyer shall notify Seller if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties pursuant to Buyer's request for additional time to verify the information provided by Seller, Buyer shall notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice may be subject to the provisions of Section 11.3. The failure of Buyer to respond to Seller's calculation of Deemed Generated Energy, if any, within thirty (30) days of receipt of an invoice shall be deemed approval of such calculation by Buyer.

(d) Seller shall, in subsequent invoices, adjust previously invoiced amounts to reflect (i) adjustments pursuant to Section 11.3, or (ii) adjustments, reconciliations or final settlements with WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (which shall be without interest of any kind), *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than one (1) year after the billing period.

(e) Within a reasonable period of time following Buyer's receipt of any Settlement Statement from CAISO that includes any amount for which Seller is responsible hereunder, including any amounts due and owing by Seller to Buyer under Section 7.3, Buyer

shall deliver such Settlement Statement to Seller, and Seller shall include a credit for the applicable amount in the next invoice delivered by Seller hereunder; *provided*, that if no further invoices are required to be delivered by Seller hereunder, Seller shall pay the applicable amount to Buyer within thirty (30) days after Buyer's delivery of the Settlement Statement. If Seller disputes any amount included in a Settlement Statement or Seller's responsibility therefor, Seller shall promptly notify Buyer of the basis of the Dispute, and the Parties shall resolve the Dispute in accordance with Section 11.3. Any amount determined to have been Seller's responsibility under Section 11.3 shall be paid by Seller with interest in accordance with Section 11.3.

**Section 11.3 Disputed Invoices.** If any portion of any invoice is in dispute, the undisputed amount, as applicable, shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. If necessary, Disputes may be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "**Interest Rate**" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

**Section 11.4 Buyer's Right of Setoff.** In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from Buyer under this Agreement or otherwise any amount due Buyer from Seller under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.3 if and to the extent paid in the first instance by Buyer.

**Section 11.5 Records and Audits.** Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this

provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, the expiration or termination date of this Agreement, or final settlement of all disputes, claims, or litigation, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at Seller's principal business office or any other of Seller's offices as mutually agreed upon by Buyer and Seller, at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and required to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. If an Authorized Auditor's examination or audit reveals that Buyer's overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit, which examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 11.5 by inserting this Section 11.5 into each Subcontract.

#### **Section 11.6 Electric Metering Devices.**

(a) Facility Energy shall be measured using a CAISO-approved revenue-quality Electric Metering Device that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised Monthly invoices, pursuant to this Article XI covering the entire applicable time period in order to conform fully such adjustments to the meter data.

Seller shall submit any revised invoices no later than thirty (30) days after the date on which the CAISO provides Seller with binding adjustments to the meter data.

(b) Seller or its Authorized Representative, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests. Upon request by Buyer, Seller or its Authorized Representative shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus one percent (+/- 1.0%), an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer (such approval not to be unreasonably withheld). If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the applicable Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

**Section 11.7 Taxes.** Seller shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery. If Seller is required by a Requirement of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

**ARTICLE XII**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 12.1 Representations, Warranties and Covenants of Buyer.** Buyer makes the following representations, warranties and covenants to Seller as of the Effective Date and continuing through the Agreement Term:

(a) Buyer is a validly existing California joint powers authority and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby and thereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement (i) has been duly authorized by all necessary action, and does not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained; and (ii) does not and will not violate any federal, state, and local law, including but not limited to the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) Buyer is not in violation of any federal, state, and local law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Buyer, or the ability of Buyer to perform any of its obligations under this Agreement.

**Section 12.2 Representations and Warranties of Seller.** Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Each of the Seller Parties is a corporation or limited liability company duly organized and validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and to enter into this Agreement and the Ancillary Documents to which it is a party, and to carry out the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and any Ancillary Documents to which it is a party.

(b) Each Seller Party has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller Party, and such Seller Party has delivered to Buyer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of

such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party;

(c) The execution, delivery and performance by each Seller Party of this Agreement and any Ancillary Documents to which it is a party have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) The execution and delivery of this Agreement and all Ancillary Documents to which any Seller Party is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and any Ancillary Documents to which any Seller Party is a party, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or shall use commercially reasonable efforts to timely obtain (and expects to obtain in due course) all Permits required for the performance of its obligations hereunder and operation of the Facility in accordance with the Requirements.

(e) This Agreement and any Ancillary Documents to which any Seller Party is a party constitute the legal, valid and binding obligation of such Seller Party enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(f) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any Ancillary Documents to which it is a party.

(g) None of the Seller Parties is in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Ancillary Documents to which it is a party.

(h) Seller is a Special Project Entity.

(i) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document to which they are a party with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for its obligations under this Agreement and any Ancillary Document to which they are a party. No petition in bankruptcy has been filed against any Seller Party, and no Seller Party nor any of their respective

constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) [Reserved].

(k) The Permits (including the CEQA Determinations) required to construct, maintain or operate the Facility in accordance with the Requirements have been or are reasonably expected to be timely obtained in the ordinary course of business.

(l) Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon each Seller Party and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller knows of no proposed Tax assessment against it that is not being actively contested by it in good faith and by appropriate proceeding.

(m) Seller owns or possesses or will acquire all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement, and Seller's use thereof does not infringe on the intellectual property rights of third parties.

(n) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Products except as provided herein.

(o) Seller reasonably expects to obtain the CEQA Determinations in the ordinary course of business in accordance with Appendix I and is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith.

(p) Seller has delivered to Buyer a true, correct, and complete copy of the Generator Interconnection Agreement.

**Section 12.3 Covenants of Seller Related to Special Project Entity Status.** Seller shall remain at all times throughout the Agreement Term a Special Project Entity.

**Section 12.4 Covenants of Seller Related to Site Control Documents.**

(a) Seller shall (i) obtain Buyer's approval prior to execution and delivery by Seller of any Primary Site Control Documents, and (ii) provide to Buyer copies of all Site Control Documents; *provided* Buyer's approval of Primary Site Control Documents shall not be unreasonably withheld, conditioned, or delayed and shall be limited to ensuring that the Primary Site Control Documents (A) are sufficient to establish Site Control with respect to the subject matter thereof, (B) meet the requirements set forth in this Section 12.4, and (C) with respect to the Shared Facilities Agreement, do not allocate a disproportionate obligation or risk to Seller when compared to the pro rata obligations of the other parties; *provided further* that Seller may redact the purchase price, rent or other financial consideration payable under any of the Site Control Documents.

(b) Seller shall (i) cause the execution (if applicable), delivery, and performance by Seller of the Site Control Documents to be duly authorized by all necessary action by Seller and to constitute the legal, valid, and binding obligation of Seller, (ii) maintain Site Control at all times after the Site Control Milestone Date, and (iii) provide Buyer with prompt notice of any change in the status of Seller's Site Control.

(c) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Site Control Documents, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair the rights of Seller under the Site Control Documents, or could be grounds for any Lessor to terminate a Site Control Document.

(d) Seller shall use commercially reasonable efforts to enforce the provisions of the Site Control Documents short of termination thereof such that Seller may enjoy all of the rights granted to Seller thereunder.

(e) Seller shall give Buyer immediate notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under any of the Site Control Documents, or of the receipt by Seller of any notice from any Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Site Control Document. Buyer or Buyer's Authorized Representative, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under a Site Control Document. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(f) After Seller's execution and delivery of a Site Control Document, Seller shall not terminate, cancel, sever or surrender, or permit or suffer the subordination, termination, cancellation, severance or surrender of, or modify, change, amend or assign the Site Control Document in a way that could, individually or in the aggregate, have a material adverse effect on Buyer, the Facility, or Seller's performance of its obligations under this Agreement, without the prior written consent of Buyer's Authorized Representative.

(g) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller, and Seller or any trustee of Seller shall decide to reject or disaffirm the Site Control Documents pursuant to the Bankruptcy Code (or allow same), Seller shall give Buyer at least ten (10) days' prior notice of the date on which application shall be made to the court for authority to reject or disaffirm such Site Control Documents or such Site Control Documents shall be otherwise rejected. Buyer shall have the right, but not the obligation, to serve upon Seller or such trustee within such ten (10) day period a notice stating that (i) Buyer demands that Seller (whether as debtor in possession or otherwise) or such trustee assume and assign such Site Control Documents to Buyer pursuant to the Bankruptcy Code, and (ii) Buyer shall covenant to cure, or to provide adequate assurance of prompt cure of, all defaults (except defaults of the type

specified in Section 365(b)(2) of the Bankruptcy Code) and to provide adequate assurance of future performance under such Site Control Documents. In the event that Buyer serves any such notice as provided above, neither Seller (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm the Site Control Documents and Seller (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within thirty (30) days after such notice shall have been given, subject to Buyer's performance of such covenant.

(h) Seller shall cause each Primary Site Control Document to include provisions providing (i) that Buyer is a third party beneficiary of the representations, warranties, and covenants of the counterparties to the Primary Site Control Documents, and that Buyer has all of the rights and benefits of Seller under, and the ability to enforce, the Primary Site Control Documents, (ii) a right for Buyer to step in and cure any breach or default by Seller under the Primary Site Control Documents prior to termination thereof, and (iii) an obligation of the counterparties to the Primary Site Control Documents to deliver to Buyer upon Buyer's request an estoppel certificate certifying (A) whether the applicable Primary Site Control Document has been supplemented, amended, assigned, or subleased, and if so, the substance and manner thereof, (B) the validity and force and effect of the applicable Primary Site Control Document, (C) the existence of any default thereunder, (D) the commencement and expiration dates of the applicable Primary Site Control Document, (E) the rights of Buyer under the Applicable Primary Site Control Document, and (F) any other matters as may be reasonably requested by Buyer. Upon any payment by Buyer to cure any default of Seller under a Primary Site Control Document that prevents termination of such Primary Site Control Document or the exercise of any other remedy of the Lessor thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall reimburse the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such reimbursement by Seller.

(i) For each Site Control Document capable of being recorded, Seller shall cause either a memorandum of such Site Control Document or the Site Control Document itself to be recorded in the applicable county for such Site Control Document promptly upon execution and delivery thereof.

**Section 12.5 Covenants of Seller Related to Material Adverse Effects.** In the event of a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller or an event of default by Seller or the operator under the O&M Agreement, Seller shall promptly thereafter notify Buyer, and Seller shall, within thirty (30) days after providing such notice, provide to Buyer a plan or report, including a report (at Seller's sole cost and expense) of a Licensed Professional Engineer with respect to an operational problem related to the Facility if reasonably requested by Buyer, that will demonstrate in detail or explanation reasonably acceptable to Buyer that the material adverse effect or Default has been mitigated or cured, or will be mitigated or cured within a reasonable period or within the cure periods provided therefor (and listing, in detail, the actions that Seller has taken, is taking, or proposes to take with respect to such condition or event), or that such material adverse effect or Default will not have a material adverse effect on the performance of Seller under this Agreement. A failure to provide such plan or report within thirty (30) days, or to diligently undertake any of the

obligations set forth under such plan or report, will be deemed a failure by Seller to perform an obligation under Section 13.1(b).

**Section 12.6 Covenants of Seller to Provide Quarterly Attestations.** Seller shall provide to Buyer on January 1, April 1, July 1 and October 1 of each Contract Year, a statement that the representations and warranties set forth in Sections 12.2(a), 12.2(b), 12.2(c), 12.2(d), 12.2(e), 12.2(f), 12.2(g), 12.2(h), 12.2(i), 12.2(m), and 12.2(n) in this Agreement remain true and correct as of the date of such statement and that there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default; *provided*, that with respect to any attestation with respect to the representation and warranty set forth in Section 12.2(f), Seller may include a disclosure schedule with any such attestation in order to make such representation true and correct.

### ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

**Section 13.1 Default.** Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate);

(b) **Performance Default.** Failure by a Party to perform any of its material duties or obligations under this Agreement (other than any failure for which a sole remedy is provided in this Agreement and any failure which is separately listed as a Default of Seller under this Section 13.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure cannot be cured within such thirty (30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to ninety (90) days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification, or other statement made by a Party in this Agreement or any Ancillary Document is materially false or inaccurate at the time made and, such default is not remedied within thirty (30) days after receipt of notice thereof from the other Party.

(d) **Bankruptcy.** Bankruptcy of either Buyer or Seller.

(e) **Performance Security Failure.** The failure of Seller to maintain or replace the Performance Security in compliance with Section 5.7.

(f) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix F that is not cured within five (5) Business Days after receipt of notice of such failure from Buyer.

(g) **Fundamental Change.** Subject to Section 14.7, Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the “*Successor Entity*”) fails to assume all the obligations of Seller under this Agreement or any Ancillary Document to which it is a party by operation of law or pursuant to an agreement satisfactory to Buyer.

(h) **Site Control Document Default.** Seller breaches any of its obligations under Section 12.4, and such breach is not cured within ten (10) days after receipt of notice thereof from Buyer, except that such cure period shall not apply to a breach of Seller’s obligations under Section 12.4(f).

### **Section 13.2 Default Remedy.**

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 13.2(a) shall affect Seller’s rights and remedies set forth in this Section 13.2. Seller’s continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including termination of this Agreement pursuant to Section 13.4. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, and (ii) termination of this Agreement pursuant to Section 13.4. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

**Section 13.3 Cure Rights of Facility Lender.** In connection with any financing or refinancing of the Facility, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement that is commercially reasonable and customary in the

industry for limited or non-recourse project financing transactions and in form and substance reasonably satisfactory to Buyer's Authorized Representative, which consent shall include, among other things, provisions permitting reasonable extensions of the cure periods for Defaults hereunder to permit the Facility Lender to cure any Default prior to Buyer's termination of this Agreement (such consent, the "**Facility Lender Consent**"). The Facility Lender Consent shall provide the Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and the opportunity to cure any such default.

#### **Section 13.4 Termination for Default.**

(a) If a Default occurs, the Party that is not the Defaulting Party (the "**Non-Defaulting Party**") may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice by it ("**Termination Notice**") to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("**Early Termination Date**") on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Section 13.1(d), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Products that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in Energy contracts and bona fide third party offers.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all other components of the Products. The "**Assumed Daily Deliveries**" is an amount equal to the greater of (A) the quotient of the Guaranteed Generation divided by 365, and (B) the average daily amount of Facility Energy during the Delivery Term, if any.

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable

detail the calculation of such amount. The Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to the dispute resolution process provided in Section 14.3. Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

(i) “**Gains**” means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) “**Losses**” means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) “**Costs**” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or in entering into new arrangements which replace this Agreement, excluding attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party’s Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section 13.4, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.4(a)(ii) above).

#### **ARTICLE XIV MISCELLANEOUS**

**Section 14.1 Authorized Representative.** Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an “**Authorized Representative**”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each

Party shall notify the other Party of the identity of its Authorized Representative, and alternates if designated, and such Party shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

**Section 14.2 Notices.** With the exception of billing invoices pursuant to Section 11.2(a) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix J, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of registered or certified mail. In addition to the foregoing, Seller and Buyer's Authorized Representatives may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

### **Section 14.3 Dispute Resolution.**

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "*Dispute*"), either Party (the "*Notifying Party*") may deliver to the other Party (the "*Recipient Party*") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "*Dispute Notice*"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 14.3(a) and (b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 and Section 14.3 of this Agreement.

(d) In addition to the Dispute Resolution process set forth in this Section, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

#### **Section 14.4 Further Assurances; Change in Electric Market Design.**

(a) Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that the other Party enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, the Parties shall engage in such negotiations in good faith. If the Parties are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 14.3. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered or constitute, or form the basis of a Force Majeure.

**Section 14.5 No Dedication of Facilities.** Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

#### **Section 14.6 Force Majeure.**

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party promptly after becoming aware thereof (and in any event within fourteen (14) days after becoming aware of the claimed Force Majeure event) (the "***Force Majeure Notice***"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy due to a Force Majeure, then Buyer shall have no obligation to pay Seller for Facility Energy not delivered or received by reason thereof. The foregoing provisions shall not excuse any obligation of Seller with respect to Shortfall Energy (and Replacement Energy, as applicable) arising prior to the occurrence of any Force Majeure event. In no event shall either Party be obligated to compensate the other Party or any other Person for any losses, expenses or liabilities sustained as a consequence of any Force Majeure.

(b) The term “*Force Majeure*” means any act of God (including fire, flood, earthquake, storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout, act of the public enemy, war (declared or undeclared), insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “*Unexcused Cause*”): (1) any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Facility Energy at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service; (7) failure of third parties to provide goods or services essential to a Party’s performance; (8) Facility or equipment failure of any kind; or (9) any changes in the financial condition of Buyer, Seller, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement.

(c) Buyer may terminate this Agreement with respect to the affected Facility if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event.

(d) Any termination of this Agreement under Section 14.6(c) shall be “no-fault” and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, Seller shall pay Buyer for any and all amounts hereunder that may be owing with respect to the terminated Facility, including for any existing Shortfall Energy or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Performance Security for the terminated Facility (less any amounts drawn by Buyer in accordance with this Agreement). The exercise by Buyer of its right to terminate the Agreement shall not render Buyer liable for any losses or damages incurred by Seller whatsoever.

#### **Section 14.7 Assignment of Agreement.**

(a) Except as set forth in this Section 14.7, (i) neither Party may assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, and (ii) Seller may not permit the assignment of any of the membership interests in Seller to a third party without the prior written consent of Buyer; *provided*, that the consent of Buyer shall not be required with respect to any assignment, sale or transfer by Seller or its Affiliates of the membership interests in Seller to a Qualified Transferee.

(b) Buyer may assign this Agreement without the consent of Seller to a Qualified Buyer Assignee; *provided*, that in connection with any such assignment any such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement; *provided further* that any modifications or amendments to this Agreement to accommodate the technical requirements of such Qualified Buyer Assignee (including as they relate to transmission and scheduling) shall require the consent of Seller, which shall not be unreasonably withheld.

(c) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Section 14.7, without the prior written consent of Buyer and otherwise subject to compliance with the Right of First Offer set forth in Section 14.25. Any purported sale or transfer in violation of this Section 14.7(c) shall be null and void and of no force or effect.

(d) Buyer's or Buyer's Authorized Representative's consent shall not be required in connection with (i) the collateral assignment of this Agreement to any Facility Lender or (ii) any assignment of all or a portion of the membership interests in Seller to any Facility Lender, in each case for the purpose of financing the Facility; *provided, however*, that (1) the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement, and (2) in connection with any such assignment and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement the Facility be operated and maintained by a Qualified Operator. Seller shall provide Buyer with ninety (90) days' prior notice of any such collateral assignment or assignment of membership interests. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Products (not including the proceeds thereof) to any Facility Lender. To facilitate Seller's obtaining of financing for the Facility, Buyer agrees to provide the Facility Lender Consent. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of the Facility Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(d).

(e) In no event shall Buyer be liable to Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu

of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer or Buyer's Authorized Representative, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by Facility Lender shall be made only to an entity that is a Qualified Transferee..

**Section 14.8 Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

**Section 14.9 Attorney Fees & Costs.** Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

**Section 14.10 Voluntary Execution.** Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

**Section 14.11 Entire Agreement; Amendments.** This Agreement (including all Appendices) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

**Section 14.12 Governing Law.** This Agreement was made and entered into in the City of Los Angeles, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

**Section 14.13 Venue.** All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

**Section 14.14 Execution in Counterparts.** This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

**Section 14.15 Effect of Section Headings.** Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

**Section 14.16 Waiver; Available Remedies.** The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise as a court of competent jurisdiction may deem just and proper to enforce this Agreement or to prevent any violation hereof. The rights granted herein are cumulative.

**Section 14.17 Relationship of the Parties.** This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

**Section 14.18 Third Party Beneficiaries.** The Participating Members are third party beneficiaries of the representations, warranties, and covenants of Seller in this Agreement and have all of the rights and benefits of Buyer under, and the ability to enforce, this Agreement. Except as set forth in the foregoing sentence, (a) the provisions of this Agreement are solely for the benefit of the Parties, (b) nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein, and (c) this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person that is not a party hereto.

**Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.**

(a) Seller undertakes and agrees to indemnify and hold harmless Buyer, the Participating Members, and all of their respective commissioners, officers, agents, employees, advisors, Authorized Representatives, and assigns and successors in interest (collectively, "*Indemnitees*") and, at the option of Buyer, to defend such Indemnitees from and against any

and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller's employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, any failure of any representation, warranty or guarantee to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee.

(b) Subject to Section 14.6, in the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by Buyer. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, or any portion thereof. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Facility, or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(d) Except to the extent included in the liquidated damages, indemnification obligations related to third party claims or other specific charges expressly provided for herein, in no event shall either Party or, in the case of Buyer, any Indemnitees, be liable for special, incidental, exemplary, indirect, punitive or consequential damages, lost profits or other costs, business interruption damages related to or arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under statute, contract, tort (including such Party's own negligence) or any other theory of liability at law or in equity. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct damages only. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes of such damages, including the negligence of any Party, whether such negligence be sole, joint, contributory, concurrent, or active or passive. The Parties hereby waive any right to contest such payments as an unreasonable penalty.

**Section 14.20 Severability.** In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held

invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

**Section 14.21 Confidentiality.**

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data (including operating data provided in connection with the scheduling of energy pursuant to Article VII or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil

investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("**Brown Act**"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act; *provided that* Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 14.21(c), (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" or "engineering plans" and (iii) support Seller in its efforts to obtain a protective order or other appropriate remedy with respect to the disclosure of operating data from the Facility or any engineering drawings, project plans, technical specifications or other similar information regarding the Facility.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to

estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity.

**Section 14.22 Mobile-Sierra.** Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall 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*, 554 U.S. 527 (2008).

**Section 14.23 Taxpayer Identification Number (TIN).** Seller declares that its authorized TIN is 27-0176702. No payment will be made under this Agreement without a valid TIN.

**Section 14.24 Service Contract.** The Parties intend that this Agreement will qualify as a “service contract” as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

**Section 14.25 Right of First Offer.**

(a) Buyer has a “*Right of First Offer*” (or “*ROFO*”) for any proposed sale of the Facility and related assets (the “*Facility Assets*”) by Seller, all in accordance with the provisions of this Section 14.25.

(b) Prior to Seller commencing the negotiation of a sale of the Facility Assets, Seller shall provide notice to Buyer of Seller’s intention to sell the Facility Assets (a “*Proposed Sale Notice*”). Upon receipt of such Proposed Sale Notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility Assets from Seller (a “*Proposed Purchase Notice*”).

(c) If (i) Buyer does not provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Facility Assets from Seller following a Proposed Sale Notice, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the sixty (60) day period set forth in Section 14.25(d), then Seller shall be free to negotiate the sale of the Facility Assets to any third party; *provided*, that that if a sale is not consummated within eighteen (18) months following the

date of the Proposed Sale Notice, then Seller must provide another Proposed Sale Notice hereunder (and go through the ROFO process hereunder) before consummating any such sale.

(d) If Buyer does provide a notice in response to Seller's Proposed Sale Notice indicating that Buyer is interested in purchasing the Facility, then the Parties shall undertake for a period up to sixty (60) days from the date of Buyer's response notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility Assets to Buyer. Failing such mutual agreement, then, subject to the requirements of Section 14.7(c), Seller shall be free to sell the Facility to any third party, *provided* that if a sale is not consummated within eighteen (18) months following the date of the expiration of such sixty (60) day period, Seller must provide another Proposed Sale Notice hereunder (and go through the ROFO process hereunder) before consummating any such sale, and *provided further* that any such sale shall not be for an aggregate purchase price less than the aggregate purchase price last offered by Seller to Buyer in writing during such sixty (60) day negotiation period.

(e) The ROFO shall not apply to any sale-leaseback or similar Facility financing by Seller or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under financing security documents.

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Each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

**SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY**

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

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

**RE CLEARWATER LLC**

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

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

**APPENDIX A  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**CONTRACT PRICE**

1. Test Energy. The Contract Price for Products associated with Test Energy is equal to 75% of the Contract Price set forth in Section 2 of this Appendix A.
2. Facility Energy. The Contract Price for the Products associated with all Facility Energy other than Excess Energy is \$69.98 per MWh.
3. Excess Energy. The Contract Price for Products associated with Excess Energy is equal to 75% of the Contract Price set forth in Section 2 of this Appendix A.

**APPENDIX B-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**FACILITY, PERMITS AND OPERATOR**

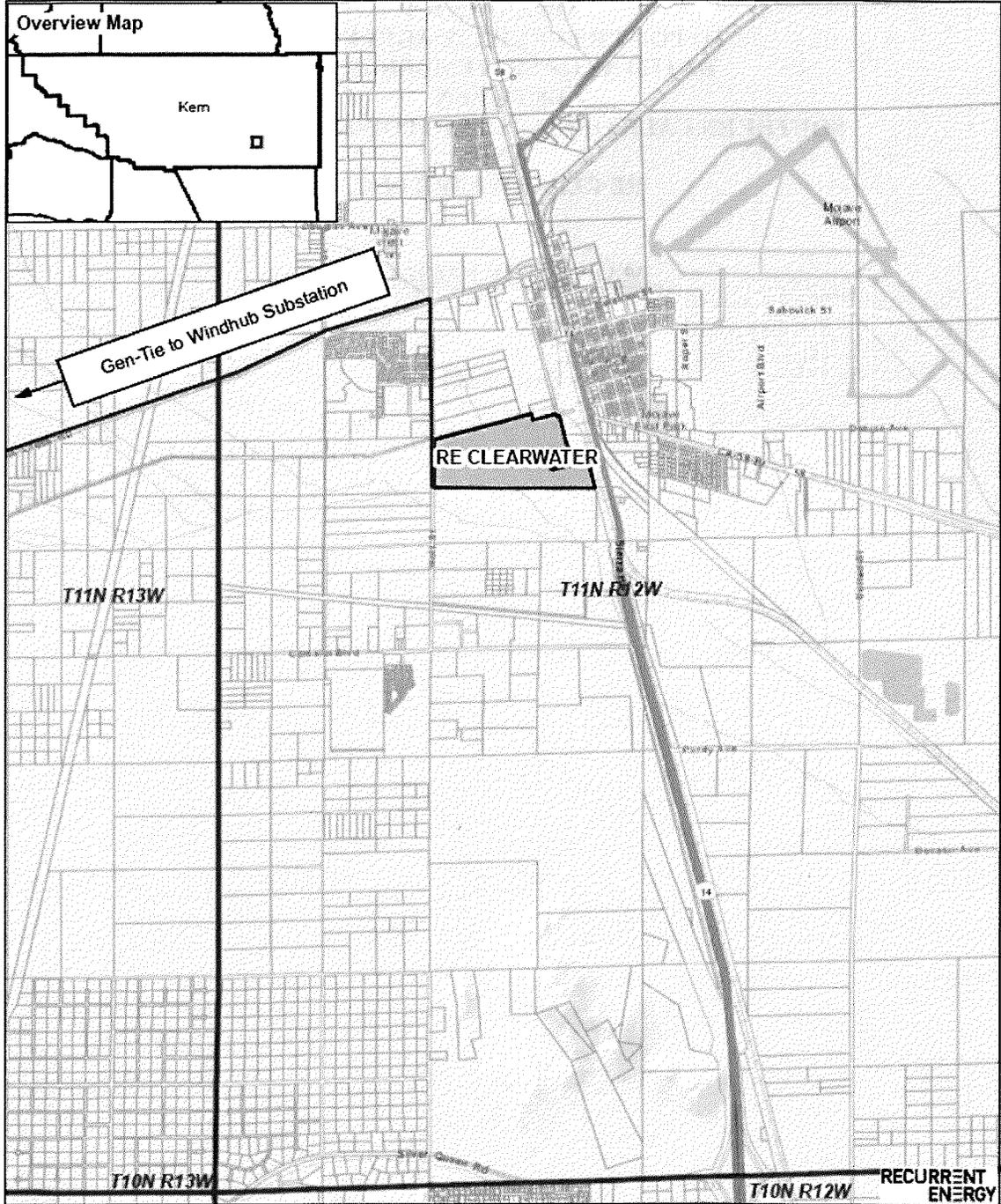
Clearwater Facility

1. Name of Facility: RE Clearwater
2. Owner: RE Clearwater LLC
3. Operator: To be designated after Effective Date
4. Type of Facility: Solar
5. Facility Capacity: 20MW
6. Equipment: Solar Photovoltaic
7. Expected Commercial Operation Date: 12/31/2014
8. Site: Physical address: NE of Intersection of Holt Street and Big Inch Pipeline Rd  
Mojave, CA 93501
9. Location, design and configuration of Facility: *See* map attached on page Appendix B-2.
10. Permits
  - a. Development and Construction:
    - i. Conditional Use Permit – Kern County
    - ii. Grading/Building Permit – Kern County
    - iii. Streambed Alteration Agreement – CDFW
    - iv. Waste Discharge Requirements – RWQCB
  - b. Operation and Maintenance:
    - i. Conditional Use Permit – Kern County

**APPENDIX B-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

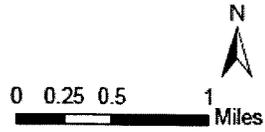
**MAP OF THE FACILITY**

[Attached.]



- Legend**
- RE Clearwater
  - Proposed Gen-tie
  - County Parcel Boundaries
  - Township/Range Line

**Location of RE Clearwater  
Kern County, CA**



**APPENDIX C**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF SEPTEMBER 19, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**RE CLEARWATER LLC**  
  
**ANNUAL CONTRACT QUANTITY**

<b>Contract Year</b>	<b>Annual Contract Quantity, MWh</b>
1	60,977
2	60,672
3	60,368
4	60,067
5	59,766
6	59,467
7	59,170
8	58,874
9	58,580
10	58,287
11	57,996
12	57,706
13	57,417
14	57,130
15	56,844
16	56,560
17	56,277
18	55,996
19	55,716
20	55,437

**APPENDIX D  
 TO POWER PURCHASE AGREEMENT,  
 DATED AS OF SEPTEMBER 19, 2013  
 BETWEEN  
 SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
 AND  
 RE CLEARWATER LLC  
FORM OF ATTESTATION**

\_\_\_\_\_ (Seller) \_\_\_\_\_ **Environmental Attribute Attestation and Bill of Sale**

\_\_\_\_\_ (“Seller”) hereby sells, transfers and delivers to Southern California Public Power Authority (“Buyer”) the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type: \_\_\_\_\_ Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_  
 As applicable: CEC Reg. no. \_\_\_\_\_ Energy Admin. ID no. \_\_\_\_\_ Q.F. ID no. \_\_\_\_\_

<u>Dates</u>	<u>MWhs generated</u>
_____ 20____	_____
_____ 20____	_____
_____ 20____	_____

in the amount of one Environmental Attribute or its equivalent for each MWh generated.

Seller further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person/telephone: \_\_\_\_\_

**APPENDIX E-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**FORM OF LETTER OF CREDIT**

**IRREVOCABLE AND UNCONDITIONAL  
STANDBY LETTER OF CREDIT NO. \_\_\_\_\_**

Applicant:

[ \_\_\_\_\_ ]

Beneficiary:

Southern California Public Power Authority  
1160 Nicole Court  
Glendale, CA 91740

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Standby Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment upon presentation to us at our office at **[bank's address]**,<sup>1</sup> of: (i) your written demand for payment containing the text of Exhibit I, (ii) your signed statement containing the text of Exhibit II and, (iii) the original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings) (the "Documents"). Drawings may be presented via fax to \_\_\_\_\_. The original Letter of Credit and documents are to be sent via overnight courier to our address indicated above.

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

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<sup>1</sup> Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

Upon presentation to us of your Documents in conformity with the foregoing, we will, on the third (3rd) succeeding Business Day after such presentation, , irrevocably and without reserve or condition except as otherwise stated herein, make payment hereunder in the amount set forth in the demand. Payment shall be made to your order in the account at the bank designated by you in the demand in immediately available funds. We agree that if, on the Expiration Date, the office specified above is not open for business by virtue of an interruption of the nature described in the Uniform Customs Article 36, this Letter of Credit will be duly honored if the specified Documents are presented by you within thirty (30) days after such office is reopened for business.

Provided that the presentation on this Letter of Credit is made on or prior to the Expiration Date and the applicable Documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely a written order issued by a court, which order specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. -

We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related Documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and Document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

This Letter of Credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Exhibit IV hereto signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the next Business Day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the Expiration Date, or any future expiration date, unless at least thirty (30) calendar days prior to the Expiration Date (or any future expiration date), we send you notice by registered mail, return receipt requested or overnight courier at your address herein stated or such other address of which you notify us in advance in writing that we elect not to consider this Letter of Credit extended for any such additional period.

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit , and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form of Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification and copy of document proving such successorship:

“The undersigned does hereby certify that [drawer] is the successor by operation of law to the Southern California Public Power Authority, a beneficiary named in [name of bank] Letter of Credit No. \_\_\_\_\_.”

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the “Uniform Customs and Practices for Documentary Credits,” (2007 Revision) of the International Chamber of Commerce Publication No. 600 (the “Uniform Customs”). As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of [\_\_\_\_\_] in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

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, except for Exhibit I, II, III and IV 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 otherwise provided in this paragraph.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the address referred to above, and shall specifically refer to this Letter of Credit no. \_\_\_\_\_.

Yours faithfully,

(name of issuing bank)

By \_\_\_\_\_  
Title \_\_\_\_\_

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$\_\_\_\_\_ by deposit to our account no. \_\_\_\_\_ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit no. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ in the amount of \$\_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_ as the Applicant.

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT II  
STATEMENT

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit no. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ in the amount of \$ \_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_, as the Applicant.

We hereby certify to you that \$ \_\_\_\_\_ is due, owing and unpaid to us by the Applicant in that certain [DESCRIBE AGREEMENT].

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT III  
AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

Beneficiary:

Applicant:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (strike two) the stated amount by \$ \_\_\_\_\_ to a new stated amount of \$ \_\_\_\_\_ or by extending the Expiration Date to \_\_\_\_\_ from \_\_\_\_\_. All other terms and conditions of the Letter of Credit remain unchanged.

An amendment is effective only when accepted by the Southern California Public Power Authority, below.

Dated: \_\_\_\_\_

Yours faithfully,

(name of issuing bank)

By \_\_\_\_\_  
Title \_\_\_\_\_

ACCEPTED

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

EXHIBIT IV

SURRENDER

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

Notice of Surrender of Letter of Credit

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

Attention: Letter of Credit Department

Ladies and Gentlemen:

We refer to your above-mentioned Irrevocable and Unconditional Standby Letter of Credit (the "Letter of Credit"). The undersigned, an authorized signer of the Southern California Public Power Authority, hereby surrenders this Letter of Credit to you for cancellation as of the date set forth above. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

**APPENDIX E-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
CLEARWATER LLC  
QUALIFIED ISSUERS LIST**

1. Mizuho Bank
2. BTMU (Bank of Tokyo-Mitsubishi UFJ)
3. Helaba
4. Santander
5. Lloyds TSB Bank plc
6. Credit Agricole
7. Union Bank, N.A.
8. Prudential Financial Inc.

**APPENDIX F  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**INSURANCE**

**I. GENERAL REQUIREMENTS**

As a condition to the Effective Date, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to the risk management section of the project manager for Buyer or acceptable to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Executive Director, Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

## **II. SPECIFIC COVERAGES REQUIRED**

### **A. Commercial Automobile Liability**

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned (if applicable), non-owned, and hired vehicles for performance of the work by Seller or its officers, agents, or employees, as required, to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its members, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement by Seller or its officers, agents, or employees. The evidence of insurance shall be a form acceptable to Buyer's risk management agent.

### **B. Commercial General Liability**

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire, Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be a form acceptable to Buyer's risk management agent, and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations of Seller and its officers, agents, or employees under this Agreement.
2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. A description of the coverages included under the policy.

### **C. Excess Liability**

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies on an endorsement to the policy

acceptable to Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

**D. Workers' Compensation/Employer's Liability Insurance**

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be a form of Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

**APPENDIX G  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**QUALITY ASSURANCE PROGRAM**

Seller shall implement a Quality Assurance (“Q/A”) Program to ensure that the performance of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that the Facility will comply with the Requirements and the manufacturers’ or suppliers’ requirements for successful operation of the Facility.

**Quality at Seller**

Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than “low” quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

“Quality assurance” refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term “quality control” to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller’s Q/A Program. In addition, quality maintenance which meets or exceeds manufacturers’ or suppliers’ requirements and best industry practices must be an integral part of Seller’s Q/A Program.

**The Quality Management Process**

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term “quality” most accurately refers to a project’s ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller’s project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller’s project management team targets the following areas to monitor quality:

- 1) A written Q/A Manual.
- 2) Independent engineering review of the entire project process, from design review through Commercial Operation.
- 3) A written maintenance manual for the Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

### **Q/A Manual**

The idea of a Q/A manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and lastly the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. Furthermore, it shall provide the plan and strategy for quality control and review during the construction period. The Q/A Manual shall strive, at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties as necessary.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the construction of the Facility.

- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

### **Conceptual Design Review**

Seller has a team of professionals who develop and review conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed in order to assess the solar resource, project constructability, site access, cultural and biological impact, land use restrictions, and landowner requirements. At this stage, the site plan is reviewed, modified as necessary, and used to begin the permitting and public review process. The site plan may be further modified based on comments received during the permitting and public review process. Subsequent to this phase, final third party engineering will commence.

### **Final Engineering Design**

Third party engineering firms, licensed to practice in the state in which the project is to be constructed, will commence the detailed design necessary for the permitting and construction of the Facility. Each firm will have its own quality assurance and quality control procedures, however, Seller and a third party independent engineer will review the final work products to ensure conformance with this Agreement. When Seller and third party independent engineer have completed a multiple phase review process, and all comments have been addressed, the design is considered final and ready for construction permitting.

During the final engineering design process, geotechnical studies will be finalized as needed. If existing subsurface conditions are different from anticipated, the design may be modified to account for any variances. Any changes of this nature will be documented in as-built design drawings and approved in advance by Seller.

### **Quality Assurance at the Construction Site**

Seller will hire a third party general contractor to construct the project. The contractor will be required to have a quality assurance program implemented by its own staff, and utilizing third party inspectors as necessary. The primary areas of focus are assuring conformance of construction to design drawings, conformance of materials to specifications, and to ensure prudent industry standards and best practices are being utilized. The contractor will be required to provide third party inspection and testing as necessary. The contractor will also be required to maintain a set of drawings during the course of construction, which will be used to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller's construction management team prior to implementation.

The contractor will provide the required oversight and training of its installation crew to ensure the construction of the facility meets their quality guidelines. As necessary, equipment suppliers will have technical advisors on site to inspect, advise, and sign off on installation means and methods. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents and Q/A procedures. The contractor and appropriate equipment suppliers will commission the generating facility per prudent industry standards, equipment specifications, and utility requirements. Prior to construction completion, a punchlist will be developed by the contractor, Seller, Seller's representatives, and third party independent engineer. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of all punchlist items. Lastly, the independent engineer will perform periodic audits during construction to oversee critical items, confirm construction progress, and provide independent reporting and assessments to the project stakeholders.

Following completion of the project, the contractor will be required to provide to Seller as-built design drawings, record of all testing documentation, and final permit approvals. This documentation will be maintained at the project site during operations of the Facility.

#### **Quality Assurance During Commercial Operations**

Seller shall supply a Quality Assurance Plan for Buyer's review and approval no less than sixty (60) days prior to the anticipated Commercial Operation Date. Upon receipt of Quality Assurance Plan, Buyer shall provide written approval, such approval not to be unreasonably withheld, or comment within ten (10) Business Days.

**APPENDIX H  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC  
  
QUALIFIED OPERATORS**

- Signal Energy, LLC
- First Solar Electric (California) Inc.
- NRG Energy, Inc.
- SunPower Corporation
- Zachry Holdings, Inc.

**APPENDIX I**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF SEPTEMBER 19, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**RE CLEARWATER LLC**  
**MILESTONE SCHEDULE**

<b>No.</b>	<b><u>Guaranteed Date</u></b>	<b><u>Milestone Description</u></b>	<b><u>Daily Liquidated Damages/Other Remedy</u></b>
1.	Ten (10) days after the Effective Date	Seller has delivered all certificates and other documents required to establish that the Insurance is in full force and effect	
2.	Ten (10) days after the Effective Date	Seller has delivered to Buyer a CEC pre-certification form duly approved by the CEC	
3.	Ten (10) days after the Effective Date	Seller has delivered to Buyer evidence reasonably satisfactory to Buyer that Seller has made all financial security postings for CAISO studies and transmission network upgrades for Full Capacity Deliverability Status	
4.	Within Ten (10) days after the Effective Date	Delivery to Buyer of the Enforceability Opinion	
5.	June 30, 2014	Seller has obtained Site Control	\$4,000 per day
6.	June 30, 2014	Seller has obtained all Permits set forth on <u>Appendix B-1</u> (which shall be final and non-appealable), excluding all Permits not yet required for Seller's development and construction of the Facility but that are reasonably expected to be	\$4,000 per day

Appendix J-1

<b>No.</b>	<b><u>Guaranteed Date</u></b>	<b><u>Milestone Description</u></b>	<b><u>Daily Liquidated Damages/Other Remedy</u></b>
		obtained in due course	
<b>7.</b>	June 30, 2014	Seller has delivered to Buyer true, correct, and complete copies of all documents relating to the environmental condition of the Site in form, scope, and substance reasonably satisfactory to Buyer, including any Phase I Environmental Site Assessment prepared relative to the Site	
<b>8.</b>	June 30, 2014	Seller has delivered to Buyer a copy of Seller's policy of title insurance in form reasonably satisfactory to Buyer	
<b>9.</b>	June 30, 2014	Closing of Project Financing, if applicable	
<b>10.</b>	June 30, 2014	Construction Start Date	\$5,000 per day
<b>11.</b>	December 1, 2014	Initial Delivery Date	
<b>12.</b>	December 31, 2014	Commercial Operation Date	\$5,000 per day

**APPENDIX J  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**AUTHORIZED REPRESENTATIVES;  
BUYER AND SELLER BILLING, NOTIFICATION AND  
SCHEDULING CONTACT INFORMATION**

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer:

Executive Director  
Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: bcarnahan@scppa.org

1.2 Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

2. **Billings.** Billings and payments pursuant to Article XI and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Payable  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: voates@scppa.org

2.2 If Payment to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Payable  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: voates@scppa.org

2.3 If Payment or Billing to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Accounts Receivable  
Telephone: (415) 675-1500 ext 407  
Facsimile: (415) 675-1501  
Email: ap@recurrentenergy.com

3. **Notices.** Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: General Counsel's Office  
Telephone: (415) 675-1500 ext 413  
Facsimile: (415) 675-1501  
Email: legal@recurrentenergy.com

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority

c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 7.5 shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740

Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

**APPENDIX K  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC  
[RESERVED]**

**APPENDIX L-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification ("***Certification***") of the Construction Start Date is delivered by RE Clearwater LLC ("***Seller***") to Southern California Public 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:

1. the EPC Contract related to the Facility was executed on \_\_\_\_\_;
2. the Notice to Proceed with the construction of the Facility was issued on \_\_\_\_\_ (attached); and
3. the Construction Start Date has occurred.

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

**RE CLEARWATER LLC**

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

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

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

**APPENDIX L-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("**Certification**") of the Commercial Operation is delivered by [independent engineer] ("**Engineer**") to Southern California Public Power Authority ("**Buyer**") in accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between RE Clearwater LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Equipment sufficient to generate at least ninety-five percent (95%) of the Contract Capacity of the Facility has been erected in accordance with the equipment manufacturer's specifications ("**Initial Mechanical Completion**");
2. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
3. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Facility Energy;
4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
5. The Facility is operational and interconnected with the CAISO grid and released by the CAISO for Commercial Operation and capable of delivering Facility Energy through the permanent interconnection facilities for the Facility.

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

EXECUTED by [INDEPENDENT ENGINEER]  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[INDEPENDENT ENGINEER]

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

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

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

**APPENDIX M  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE CLEARWATER LLC**

**INTEGRATION COST CHARGE CODE SCHEDULE**

This Appendix shall be completed and updated from time to time by the Parties in accordance with Section 7.3.

*Execution Copy*

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**COLUMBIA TWO SOLAR PROJECT**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF RIVERSIDE, CALIFORNIA**

**Dated as of September 19, 2013**

**COLUMBIA TWO SOLAR PROJECT  
POWER SALES AGREEMENT**

1. **PARTIES.** This COLUMBIA TWO Solar Project Power Sales Agreement, is made and entered into as of this 19th day of September 2013, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” created under the provisions of the Act, and the CITY OF RIVERSIDE, California, a California charter city and municipal corporation organized and existing under the laws of the State of California, hereinafter designated as “Riverside,” or, depending upon context, as “Participant.” SCPPA and Riverside are each sometimes hereinafter referred to individually as “Party” and together as “Parties.”
  
2. **RECITALS.** This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act”), by its members, which are municipalities and an irrigation district that supply or will supply electricity in the State of California, for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.
  
  - 2.2 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the “Renewable Electric Energy Resource Project” to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA’s Joint Powers Agreement. Thereafter on March 17, 2006, the Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project. Thereafter, on January 19, 2012, the Board of Directors issued Resolution 2012-008 establishing a Phase II Renewable Development Project (“Phase II”) and declaring the Phase II to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement.
  
  - 2.3 In pursuit of the goals of the Renewable Electric Energy Resource Project (including Phase II) SCPPA issued Requests for Proposals (“RFP”) for potential renewable electric resources to address SCPPA member renewable energy needs, and as a result of responses to that RFP SCPPA and three of its members, the Cities of Azusa, Colton and Riverside (the “Project Participants”), have investigated the feasibility of a photovoltaic solar electric generating facility (the “Facility”) to be designed, constructed, maintained and operated by RE Columbia Two Solar LLC, a Delaware limited liability company (the “Power Purchase Provider”), an affiliate of Recurrent

Energy LLC, a Delaware limited liability company (the "Project"). The Facility will be located in Kern County, California, on a site leased or owned by the Power Purchase Provider.

- 2.4 SCPPA desires to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of all Facility Output including, but not limited to, Energy, Capacity Rights and the associated Environmental Attributes from the Facility for the purpose of selling all said purchased Facility Output to Participant and the other Project Participants pursuant to this Agreement and Power Sales Agreements with such other Project Participants.
- 2.5 Participant has a need for an economical, reliable source of Energy, Capacity Rights and Environmental Attributes to meet the requirements of new environmental and energy procurement laws, as well as the demands of its current and/or future customers in an environmentally responsible manner and, as such, has determined that it is desirable to enter into this Agreement to purchase a Contract Share of the Energy and Environmental Attributes of the Facility from SCPPA.
3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows.
4. **DEFINITIONS.** The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Power Purchase Agreement, which is incorporated herein by this reference, or by the definitions set forth in the attached Appendix A
5. **TERM, PURCHASE AND SALE OF FACILITY OUTPUT.**
  - 5.1 Term. This Agreement shall be effective upon execution and delivery by both Parties (the "Effective Date") and, unless earlier terminated pursuant to an express provision of this Agreement, shall be coterminous with the Power Purchase Agreement.
  - 5.2 Purchase and Sale of Contract Share. In accordance with the terms and conditions hereof, commencing on the first date that Test Energy is available and continuing throughout the Term, SCPPA shall sell, schedule, and deliver to the Point of Delivery, and Participant shall purchase and accept from SCPPA at the Point of Delivery, all Facility Output and Replacement Energy associated with Participant's Contract Share.
6. **OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.**

Establishment and Authorization of the Coordinating Committee. The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) the administration, as applicable, of any operating agreement or any maintenance agreement, (v) otherwise making any

recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto, (vi) exercising any rights with respect to any default by the Power Purchase Provider under any agreements, deeds of trust, leases or other instruments and (vii) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant (“Authorized Representative”). Each Project Participant shall be entitled to cast a vote equal to its Contract Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Participant shall, within 30 days after SCPPA has entered into the Power Sales Agreement between SCPPA and Participant, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant’s representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee (“Chairperson”) shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA’s representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of Project Participants having Contract Shares aggregating at least eighty percent (80%) of the total Project Contract Shares cast thereon. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, such Project Participant agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action. Participant acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Participant in connection with any such Project Agreement or supplement or amendment, provided

that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement.

- 6.1 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 the Coordinating Committee shall have the following responsibilities:
- 6.1.1 Provide liaison between SCPPA and the Project Participants at the management or other levels with respect to the operation and ongoing administration of the Project, and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
  - 6.1.2 If any desired Project design, feasibility or planning studies or activities which are to be completed by SCPPA have not been completed by the Effective Date of this Agreement, oversee, as appropriate, the continuation and completion of such Project design, feasibility or planning studies or activities.
  - 6.1.3 Exercise general supervision over any subcommittee established pursuant to Section 6.3.5.
  - 6.1.4 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
  - 6.1.5 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 7 of this Agreement.
  - 6.1.6 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 7 of this Agreement.
  - 6.1.7 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
  - 6.1.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the Facility or an ownership interest therein and the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.

- 6.1.9 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, diurnal, barometric and meteorological information, solar photovoltaic metallurgic chemical and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, shaping, exchanging, balancing, movement, or other delivery information, climate and weather related matters, cloud conditions, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts, consultants or others.
- 6.1.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.1.11 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities
- 6.1.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.1.13 Review, modify, approve or otherwise act upon any proposed change to the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.1.14 Review, approve or otherwise act upon any proposed extension or modification of any date set forth in Appendix I of the Power Purchase Agreement or of any Milestone under the Power Purchase Agreement which, in the discretion of the Coordinating Committee, may be appropriate, desirable or otherwise in SCPPA's interest. The Coordinating Committee

may impose other conditions or qualifications upon the grant of any such extension as the Coordinating Committee shall deem appropriate.

- 6.1.15 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed Energy Production under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.
- 6.1.16 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate., including changes to Appendix B when necessary to reflect a reallocation of Contract Shares after termination of a Defaulting Project Participant's rights and obligations in the Project pursuant to section 9.4 of this Agreement or an assignment of a Participant's rights and obligations under section 16 of this Agreement. Any such change to Appendix B shall be considered an element of the administration of this Agreement and not an amendment requiring the consent of the Parties hereto.
- 6.1.17 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.
- 6.1.18 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any Point of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.1.19 Review, and, if appropriate, recommend, modify or approve policies or programs formulated by the Project Manager, any counterparty under any Project Agreement or any other Person for the exchange of energy from the Facility.
- 6.1.20 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the solar energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.1.21 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.1.22 Review, modify and approve SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any

uninsured claim that the Project Manager may settle without prior approval of the Coordinating Committee.

- 6.1.23 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.1.24 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions contemplated in the Power Purchase Agreement.
- 6.1.25 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters.
- 6.1.26 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Ancillary Documents, other Project Agreements, or as may otherwise be appropriate or beneficial to the Project.

6.2 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.2.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase Agreement, including any purchase or acquisition of the Facility or any portion thereof and shall carry out those measures necessary to address such developments, including any purchase or acquisition of the Facility or any portion thereof.
- 6.2.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.
- 6.2.3 Scheduling Procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act

upon and approve or modify the practices and procedures to be followed by the Project Participants for the scheduling, delivering, controlling and allocating Facility Output associated with the Project.

- 6.2.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.2.5 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
- 6.2.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 6.7 of this Agreement.
- 6.2.7 Revision of Appendix B. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendix B, as applicable, of this Agreement as provided in and subject to the provisions of Sections 6.2.16, 9.4 and 16.
- 6.2.8 Supervening Authority of the Board. The Board of Directors is reposed with complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Coordinating Committee or which is specified as being within the authority of the Coordinating Committee pursuant to the provisions of this Agreement, including those matters enumerated in Section 6.1 and 6.2 of this Agreement.
- 6.2.9 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through any development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement.
- 6.4 Scheduling Coordinator. SCPPA, or upon SCPPA's designation, one of the Project Participants, as the Project Participants may approve, shall act as Scheduling Coordinator on behalf of all of the Project Participants with respect to the Energy, Capacity Rights, Test Energy and any other such products derived from Facility Output, from the Facility to the Point of Delivery on the CAISO grid as provided in the Power Purchase Agreement.

- 6.5 Contract Administration. SCPPA shall use best efforts, on behalf of the Participants, to maximize the value of, and all products, rights, and benefits pursuant to, the Power Purchase Agreement and Scheduling Coordinator Agreement.
- 6.6 Adoption of Annual Budget. At least sixty (60) days prior to the beginning of each Fiscal Year, SCPPA will prepare, or cause to be prepared, and submit to the Participants, a proposed Annual Budget for such Fiscal Year. Such Annual Budget shall reflect the most recent Contract Costs estimates and other information provided to SCPPA. SCPPA may include in the Annual Budget reasonable amounts in excess of the estimated Contract Costs to be collected as an operating reserve to ensure that SCPPA may timely pay all Contract Costs. The Project Participants may submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the proposed Annual Budget. The Board of Directors shall adopt the Annual Budget not less than ten (10) days or more than sixty (60) days prior to the beginning of such Fiscal Year and shall cause a copy of such adopted Annual Budget to be delivered to the Participants. During any Fiscal Year, upon 10 calendar days' notice to the Participants, the Board of Directors may adopt an amended Annual Budget for and applicable to the remainder of such Fiscal Year. The Annual Budget, and not actual Contract Costs, shall establish the basis for Billing Statements to the Project Participants pursuant to Section 7 of this Agreement.
- 6.7 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts associated with this Agreement, including but not limited to Energy, Test Energy, Contract Costs, billings and collections under this Agreement. Such records shall be maintained for a period of no less than four (4) years following each applicable Fiscal Year.
- 6.8 Adjustment of Billing. On or before 150 days after the end of each Fiscal Year, the Authority shall submit to the Project Participants a detailed statement of (i) the actual Contract Costs, including credits and adjustments thereto, if any, for all of the months of such previous Fiscal Year, and (ii) the maintenance of an operating reserve as permitted in Section 6.7 hereof. If, on the basis of the statement submitted pursuant to this Section 6.9, the Participant's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year exceeds the amounts of the applicable Billing Statements billed to Participant hereunder, then the difference will be billed to Participant and Participant shall promptly pay SCPPA for such adjustment billing. If, on the basis of the statement submitted pursuant to this Section 6.9, the Participant's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year is less than the amounts of the applicable Billing Statements billed to Participant hereunder, then SCPPA shall credit Participant the difference on Participant's next Billing Statement.
- 6.9 Provide Information. SCPPA agrees to supply Participant, upon request, with information and documentation associated with Contract Costs. Participant agrees to supply SCPPA with scheduling and settlement information and documentation, if any, requisite and necessary to reconcile and allocate Contract Costs.

**7. CHARGES AND BILLINGS.**

- 7.1 Billing Statement. By the fifth (5<sup>th</sup>) calendar day of each Month during the Term, SCPPA shall prepare and deliver a Billing Statement to Participant for its Contract Share of projected Contract Costs, based on the Annual Budget. Participant shall pay SCPPA amounts due under said Billing Statement on or before the twenty-fifth (25<sup>th</sup>) day of said Month.
- 7.2 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Contract Costs and other costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.3 Disputed Billing Statement. In case any portion of any Billing Statement received by Participant from SCPPA shall be in bona fide dispute, Participant shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, will be credited to Participant by SCPPA after such determination. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Participant with regard to SCPPA's position relative thereto within thirty (30) days following receipt of written notification by Participant of such dispute.
- 7.4 Annual Reconciliation of Costs. As soon as practicable after the end of each Fiscal Year, SCPPA will submit to Project Participants a detailed statement of the actual aggregate Contract Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Fiscal Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Fiscal Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.1, the actual aggregate Contract Costs and other amounts payable by the Project Participants for any Fiscal Year exceed the amount thereof which Project Participants have been billed, Project Participants shall pay SCPPA, within 20 days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.1, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Fiscal Year are less than the amount therefor which Project Participants have been billed, SCPPA shall, unless otherwise directed by Participant or the other Project Participants with respect to moneys owed to each, credit such excess against Participant's and the other Project Participants' next monthly Billing Statement.
- 7.5 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project

- 7.6 Prepayment of Monthly Costs. Participant may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Participant with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Participant and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Participant to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Participant's other obligations under this Agreement.
- 7.7 Costs or Expenses Incurred for Sole Benefit of Participant. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Participant, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Participant, in which event only Participant (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Participant shall be deemed to be paid last from amounts paid by Participant for the payment of its Billing Statements or Default Invoices.
- 7.8 Credit or Other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. .

**8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.**

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project, (ii) the effective date of any Project Agreement, (iii) the effective date of the Power Purchase Agreement (iv) the date upon which SCPPA first incurs or accrues costs associated with the Power Purchase Agreement and other Project Agreements, or

(v) the date of the first delivery of Facility Output to Participant and continuing through the Term of this Agreement, Participant shall pay SCPPA the amounts of Contract Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Participant in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Default Invoices received by Participant as a result of the operation of Section 9 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 Source of Payments. The Participant hereby represents, warrants and agrees that the obligations of Participant to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Participant payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Participant will annually in each and every fiscal year of Participant during the Term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Participant will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Participant to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Participant hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or Person, is required on the part of the Participant for the execution and delivery by the Participant of this Agreement, or the performance by the Participant of its obligations under this Agreement except for such as have been obtained.
- 8.5 Conflicts. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, the execution and delivery of this Agreement by Participant, and Participant's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Participant's power revenue fund.
- 8.6 Litigation. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Participant (service of process on Participant having

been made) in any court that questions the validity of the authorization, execution or delivery by Participant of this Agreement, or the enforceability on Participant of this Agreement.

**9. NONPERFORMANCE AND PAYMENT DEFAULT.**

- 9.1 Nonperformance by Participant. Subject to the provisions in this Section 9 regarding a Payment Default, if a Participant shall fail to perform any covenant, agreement or obligation under its Power Sales Agreement, SCPPA may, in the event the performance of any such obligation under this Agreement remains unsatisfied after thirty (30) days' prior written notice thereof to such Participant and a demand to so perform, take any action permitted by law to enforce its rights under its Power Sales Agreement and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Participant with regard to its failure to so perform.
- 9.2 Notice of Payment Default. Promptly following a Payment Default by a Participant, SCPPA shall provide written notice to such Participant that as a result of a Payment Default it is a Defaulting Project Participant whose rights, including its Contract Shares, under its Power Sales Agreement are subject to discontinuance, termination and disposal within 30 days of the date of such notice. Notice of such Payment Default shall be provided promptly by SCPPA to all other Participants.
- 9.3 Retention of Rights During Payment Default Period. During a Payment Default Period with respect to a Defaulting Project Participant, its rights, including its Contract Shares, under its Power Sales Agreement shall not be discontinued, terminated or disposed of as provided for in Section 9.4 of its Power Sales Agreement as a result of a Payment Default. During such Payment Default Period, SCPPA shall send to the Defaulting Project Participant a separate Default Invoice. If the Defaulting Project Participant pays in full such default invoice within the Payment Default Period, the Defaulting Project Participant shall no longer be deemed a Defaulting Project Participant and its rights, including its Contract Shares, under its Power Sales Agreement shall not be subject to discontinuance, termination or disposal as provided for in Section 9.4 of its Power Sales Agreement. The Defaulting Project Participant shall make separate payments to SCPPA with respect to its Billing Statement and a Default Invoice.
- 9.4 Rights Under Power Sales Agreement Terminated. If a Defaulting Project Participant fails to pay its Default Invoice within the Payment Default Period, its rights, including its Contract Shares, under its Power Sales Agreement shall immediately and permanently be discontinued and terminated; provided, however, the Defaulting Project Participant's obligation to make payment of its Default Invoice shall not be eliminated or reduced and the Defaulting Project Participant's other obligations to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of its rights and obligations, less SCPPA's related costs and expenses. SCPPA shall immediately notify each of the other Participants of such discontinuance and termination.

- 9.4.1 SCPPA shall, to the extent permitted under the Project Agreements, offer to convey, transfer and assign to all non-Defaulting Project Participants, on a temporary or permanent basis as determined by SCPPA, the Project rights and obligations of the Defaulting Project Participant, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting Project Participants the amount of Project rights and obligations requested, if the aggregate of such requests does not exceed the amount of the Project rights and obligations of the Defaulting Project Participant, or (ii) all requesting non-Defaulting Project Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project rights and obligations of the Defaulting Project Participant. Each such requesting non-Defaulting Project Participant shall assume all, but not less than all, Project rights and obligations so conveyed, transferred and assigned to it by SCPPA.
- 9.4.2 If all of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting Project Participants as provided in Section 9.4.1 of its Power Sales Agreement, SCPPA shall, to the extent permitted under the Project Agreements and to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) of Defaulting Project Participant's Project rights and obligations to other SCPPA members or to third parties, all in accordance with applicable law. Each such requesting SCPPA member shall assume all, but not less than all, Project rights and obligations so conveyed, transferred and assigned to it by SCPPA.
- 9.4.3 If, at any time or from time to time, any of the Project rights and obligations of a Defaulting Project Participant are not conveyed, transferred and assigned as provided in Sections 9.4.1 or 9.4.2 of its Power Sales Agreement, SCPPA shall use its best efforts, to the extent permitted by the Project Agreements and economically beneficial, to offer all non-Defaulting Project Participants, other SCPPA members and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project rights and obligations or to remarket or resell such Facility Output, or cause the same to be remarketed or resold; provided further, however, that without eliminating Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of Facility Output associated with Defaulting Project Participant's Project rights. If at the time of any Coordinating Committee meeting, any of Defaulting Project Participant's Project rights and obligations are not conveyed, transferred and assigned as provided in Sections 9.4.1 or 9.4.2, the associated voting rights with respect to Defaulting Project Participant's Project rights and obligations shall be redistributed pro rata among the non-Defaulting

Project Participants, based upon each non-Defaulting Project Participant's Contract Share, so that the total voting rights remain at 100%.

Except as provided in this Section 9.4 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any Project Participant's Rights and Obligations without the prior written consent of the Project Participant.

9.5 Use of Operating Reserve. With respect to a Payment Default by a Participant, funds in any operating reserve for the Project shall be used, to the extent necessary and to the extent available, to pay amounts due under the Power Purchase Agreement. To the extent deemed necessary by SCPPA, a pro-rated amount of the Default Invoice (excluding any amounts due to late payment) may be added to the next Billing Statement for each non-Defaulting Project Participant in order to replenish the operating reserve.

## **10. CHARACTER, CONTINUITY OF SERVICE.**

10.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in the Power Purchase Agreement or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the Power Purchase Provider or, if SCPPA shall acquire the Facility or an ownership interest therein, SCPPA, its agent or the Project Manager, as the case may be, may temporarily interrupt or curtail deliveries of Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any associated Facility outage, which shall cause a reduction in deliveries of Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

10.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of Facility Output at the Point of Delivery, (i) the resulting reduction in Facility Output at the Point of Delivery shall be shared by the Project Participants pro rata in accordance with their respective Contract Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Contract Shares.

10.1.2 No such interruption or curtailment of deliveries of Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their obligations to make payments under their respective Power Sales Agreements, except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

- 10.1.3 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.
- 10.1.4 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants.
- 10.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Project Participants shall not thereby be relieved of their obligations to make payments under their respective Power Sales Agreements except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

## **11. SEVERAL OBLIGATION; LIABILITY.**

- 11.1 Participants' Obligations Several. Participant and each of the other Project Participants shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants under the other Power Sales Agreements to which such Project Participants are parties.
- 11.2 No Liability of SCPPA, Directors, Officers, Etc. Participant agrees that neither SCPPA nor any of its directors, officers, employees and agents shall be liable to Participant for loss of profits or direct or consequential loss or damage suffered by Participant as a result of the performance or non-performance (whether negligent or otherwise) of SCPPA or any of its directors, officers, employees or agents under this Agreement. Participant releases SCPPA and its directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of SCPPA under this Agreement. No such performance or non-performance by SCPPA shall relieve Participant from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. The provisions of this Section 11.2 shall not be construed so as to relieve SCPPA from any obligation under this Agreement.

- 11.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 11.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Participant may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA and Participant shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Participant in accordance with Sections 6.9 and 7.4 hereof.
- 11.4 Indemnification for Claims of Retail Customers. Participant shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with electric service to any of its retail customers caused by the operation or failure of operation of the Facility or any portion thereof, and shall indemnify and hold harmless each of the other Project Participants and SCPPA from any such claim, action or judgment (including reasonable attorneys' fees and other costs of defense).
- 11.5 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 11.2, 11.3 and 11.4 hereof, Participant or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 11.6 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 11, the provisions of this Section 11 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 11.7 SCPPA Directors, Officers, Employees, Agents Not Individually Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no member of SCPPA's Board of Directors, officer, employee or agent of SCPPA or member of SCPPA in its capacity as a member of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The undertakings by SCPPA under the Power Sales Agreements shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.
12. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

**13. CONDITIONS TO TERMINATION OR AMENDMENT.**

Rights Among Participants. None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except upon written notice to and written consent or waiver by each of the other Project Participants and upon similar amendment being made to the Power Sales Agreement of any other Participant requesting such amendment after receipt by such Participant of notice of such amendment.

**14. GOVERNING LAW.** This Agreement shall be interpreted, governed by and construed under the laws of the State of California.

**15. ARBITRATION.** If a dispute arises between the Parties which the Authorized Representatives are unable to resolve, the Parties may submit the dispute to arbitration. The arbitration will be conducted in accordance with the mutual written agreement of the Parties.

**16. ASSIGNMENT.** Unless otherwise mutually agreed to by the Parties, a Participant may assign some or all of its rights and obligations under its Power Sales Agreement, including its Contract Share, only to other SCPPA members under the same terms and conditions of its Power Sales Agreement. In the event of such an assignment, Appendix B shall be revised by SCPPA to reflect the new Contract Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.

**17. NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority  
Attn: Bill D. Carnahan, Executive Director  
1160 Nicole Court  
Glendora, California 91740

City of Riverside  
Riverside Public Utilities Dept.  
Attention: General Manager  
3750 University Ave. 5<sup>th</sup> Floor  
Riverside, California 92501  
Either Party may give notice of a change of address or other information set forth above by giving notice as provided in this section.

**[SIGNATURES ON NEXT PAGE]**

*[Faint signature]*

*[Faint signature]*

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalf by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

By: \_\_\_\_\_  
RONALD E. DAVIS  
President

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

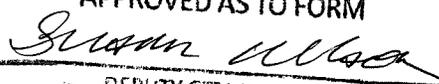
CITY OF RIVERSIDE, CALIFORNIA

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

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

Attest: \_\_\_\_\_

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

APPROVED AS TO FORM  
  
DEPUTY CITY ATTORNEY

## APPENDIX A

### DEFINITIONS

1. **Annual Budget.** The budget adopted by SCPA pursuant to Section 6.7, including any amendments thereto, which shall show a detailed estimate of the Contract Costs and all revenues, income, or other funds to be applied to such Contract Costs, if any, for and applicable to a Fiscal Year.
2. **Billing Statement:** The written statement prepared or caused to be prepared each Month by, or on behalf of SCPA, which shall show for such Month the amount to be paid to SCPA by a Participant in accordance with the provisions of Section 7.
3. **Board of Directors.** The Board of Directors of the Southern California Public Power Authority.
4. **Capacity.** The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
5. **Contract Costs:** All costs incurred by SCPA in the administration, operation and maintenance of the Project, including any costs incurred or expenditures made pursuant to the Power Purchase Agreement and all other Project Agreements. Contract Costs shall consist of both direct charges and associated administrative and general expenses.
6. **Contract Share:** A percentage of all products, rights, benefits, obligations, and liabilities, without limitation, pursuant to the Power Purchase Agreement, including but not limited to Facility Output (or Replacement Energy, when applicable), Capacity Rights and Environmental Attributes. A schedule of Contract Shares for the Projects Participants is included as Appendix B, which may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.
7. **Cured Payment Default.** A Payment Default which has been cured in accordance with Section 9.3 of this Agreement. If at any time during the Payment Default Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPA and the Payment Default Period shall expire.
8. **Default Invoice.** An invoice during the Payment Default Period and the Payment Default Period issued to a Defaulting Project Participant pursuant to Section 9 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Payment Default Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
9. **Defaulting Project Participant.** A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not affected a Cured Payment Default.

10. **Facility Output.** All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Energy (including Facility Energy, Delivered Energy and Excess Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility by SCPPA as owner following SCPPA's purchase of the Facility. The term Facility Output is synonymous with the term "Products" as defined in the Power Purchase Agreement.
11. **Fiscal Year.** The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other period as determined by SCPPA.
12. **Month:** A calendar month.
13. **Payment Default:** A failure by a Participant to pay when due all of its Billing Statement for any Month.
14. **Payment Default Period:** That period of time beginning on the initial date of a Payment Default and ending [30] days following a notice of default as provided in accordance with Section 9.2 hereof.
15. **Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.
16. **Power Purchase Agreement:** The agreement between SCPPA and the Power Purchase Provider for the purchase of the Energy from the Facility, including the associated Environmental Attributes, as amended from time to time. A copy of the Power Purchase Agreement is included as Appendix C.
17. **Project Agreements.** The Power Purchase Agreement, this Power Sales Agreement and the Power Sales Agreements between SCPPA and the other Project Participants, any agency agreement between SCPPA and a Project Participant pursuant to which the Participant acts as the Project Manager, and a Scheduling Coordinator Agreement, should the Project Participants elect to enter into one.
18. **Term:** The period of time during which the Agreement is in effect as defined in Section 5.1.
19. **Test Energy:** Energy generated by the Facility and delivered to the Point of Interconnection prior to the Commercial Operation Date.
20. **Uncontrollable Force:** Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.

**APPENDIX B**

**SCHEDULE OF CONTRACT SHARES**

<u>Participants</u>	<u>Contract Share</u>
City of Azusa	8.571%
City of Pasadena	17.143%
City of Riverside	<u>74.286%</u>
TOTAL	100.00%

**APPENDIX C**

**POWER PURCHASE AGREEMENT**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**RE COLUMBIA TWO LLC**

**AND**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

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## POWER PURCHASE AGREEMENT

### PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), dated as of this 19th day of September, 2013, is being entered into by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement (each as defined below) ("*Buyer*"), and RE COLUMBIA TWO LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"). Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together as the "*Parties*."

### RECITALS

WHEREAS, Buyer's members have adopted or are adopting policies to comply with the California Renewable Energy Resources Act that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources; and

WHEREAS, on January 1, 2013, Buyer issued a request for proposals to acquire renewable energy resources; and

WHEREAS, Recurrent Energy responded to Buyer's request for proposals on behalf of Seller and, following negotiation, has agreed to permit Seller to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy and associated environmental attributes; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### ARTICLE I DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions.** The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

"**Act**" means all of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq.

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or

officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble of this Agreement, and includes Appendices A through L, attached hereto.

“**Agreement Term**” has the meaning set forth in Section 2.2(a).

“**Ancillary Documents**” means all agreements and other documents included in the Performance Security.

“**Annual Contract Quantity**” means, for each Contract Year, the number of MWh set forth on Appendix C.

“**ASME**” means American Society of Mechanical Engineers.

“**Assumed Daily Deliveries**” has the meaning set forth in Section 13.4(c).

“**ASTM**” means American Society for Testing and Materials.

“**Authorized Auditors**” means representatives of Buyer or Buyer’s Authorized Representative who are authorized to conduct audits on behalf of Buyer.

“**Authorized Representative**” has the meaning set forth in Section 14.1.

“**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.

“**AWS**” means American Welding Society.

“**Bankruptcy**” means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for ninety (90) days.

“**Brown Act**” has the meaning set forth in Section 14.21(d).

“**Business Day**” means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Riverside, California or New York, New York.

“**Buyer**” has the meaning set forth in the preamble of this Agreement.

“**Cal-OSHA**” means the California Occupational Safety & Health Administration.

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

“**CAISO Integration Amounts**” has the meaning set forth in Section 7.3(c).

“**CAISO Integration Amounts Cost Cap**” means the maximum dollar amount of CAISO Integration Amounts for which Seller is liable and shall equal (a) in any Contract Year, One Hundred Seven Thousand Dollars (\$107,000) and (b) during the Delivery Term, an aggregate of Six Hundred Forty-Two Thousand Dollars (\$642,000).

“**CAISO Integration Amounts Protocol**” has the meaning set forth in Section 7.3(d).

“**CAISO Intermittent Resource Protocol**” means the Participating Intermittent Resource Protocol of the CAISO Tariff (and any successor protocol thereto).

“**CAISO Tariff**” means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto.

“**CAMD**” means the Clean Air Markets Division of the EPA and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability of Environmental Attributes.

“**Capacity Rights**” means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, Local Capacity Requirement Attributes, associated attributes or reserves, or any of the foregoing as may in the future be defined by the CAISO, or any other balancing authority, reliability entity or Governmental Authority associated with the electric generating capability of the Facility, including the right to resell such rights.

“**CEC**” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

“**CEC Certified**” means that the CEC has certified that the Facility is an eligible renewable Energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.

“**CEC Performance Standard**” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“**CEQA**” means the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq., as amended from time to time, and any successor statute.

**“CEQA Determinations”** means that:

(a) The lead agency conducting the review of the Facility as required under CEQA shall have (i) reviewed and approved the CEQA Documents, (ii) issued a final approval for such Facility, and (iii) filed a Notice of Determination in compliance with CEQA; and

(b) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

**“CEQA Documents”** means an initial study and a final environmental impact report or equivalent document upon which the lead agency issued a final approval for the Facility.

**“Change in Law”** means a change to WREGIS, or any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority (other than Buyer), including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval.

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

**“Closing”** means the consummation of the transactions with respect to a sale pursuant to Buyer’s exercise of the Right of First Offer.

**“Commercial Operation”** means all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, “substantial completion” under the relevant construction contracts has been achieved, and the Facility possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to operate the Facility;

(c) Seller has delivered to Buyer a certificate of an independent engineer substantially in the form attached hereto of Appendix L-2;

(d) Seller has obtained all Permits (including the CEQA Determinations) required for the operation and maintenance of the Facility in accordance with this Agreement, including the Permits identified on Appendix B-1, and all such Permits are final and non-appealable;

(e) Seller has entered into an agreement providing for the operation and maintenance of the Facility with a Qualified Operator;

(f) Buyer has received the Delivery Term Security in a form reasonably acceptable to Buyer;

(g) The Facility is both authorized and able to operate and deliver Energy at the Contract Capacity in accordance with the Generator Interconnection Agreement, Prudent Utility Practices, the Requirements, and all Requirements of Law; *provided* that the Facility need not be CEC Certified as a condition to achieving Commercial Operation; and

(h) Seller has provided evidence reasonably satisfactory to Buyer that all terms and conditions of the Generator Interconnection Agreement have been fully performed such that the Facility is deemed eligible for Full Capacity Deliverability Status and qualifies for associated Resource Adequacy Attributes.

“**Commercial Operation Date**” means the date on which Commercial Operation of the Facility occurs, as determined pursuant to Section 3.5.

“**Confidential Information**” has the meaning set forth in Section 14.21(a).

“**Construction Start Date**” means the date on which Seller delivers to Buyer a written certification substantially in the form attached hereto as Appendix L-1.

“**Contract Capacity**” means 15 MW, as measured by the sum of inverter nameplate capacity.

“**Contract Price**” means, for any period of time, the applicable Contract Price set forth in Appendix A.

“**Contract Year**” means a twelve (12) month period beginning on the Commercial Operation Date and each successive twelve (12) month period thereafter.

“**Costs**” has the meaning set forth in Section 13.4(f)(iii).

“**Cover Damages**” has the meaning set forth in Section 6.3.

“**CPRA**” has the meaning set forth in Section 14.21(d).

“**Curtailed Period**” means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive from a Transmission Provider, the CAISO, WECC, NERC, or any other reliability entity due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, (d) over-generation or any other reason adversely affecting the normal function and operation of the CAISO grid or a Transmission Provider’s system, as may from time to time be identified by the CAISO, the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term “Curtailed Period” shall not include curtailments directed by CAISO for economic reasons.

“**Daily Delay Damages**” has the meaning set forth in Section 3.6(c).

“**Deemed Generated Energy**” has the meaning set forth in Section 7.5(c).

“**Default**” has the meaning set forth in Section 13.1.

“**Defaulting Party**” has the meaning set forth in Section 13.1.

“**Delivery Term**” has the meaning set forth in Section 2.2(b).

“**Delivery Term Security**” has the meaning set forth in Section 5.7(b).

“**Dispute**” has the meaning set forth in Section 14.3(a).

“**Dispute Notice**” has the meaning set forth in Section 14.3(a).

“**Downgrade Event**” shall mean any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or the commencement of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to such Person.

“**Early Termination Date**” has the meaning set forth in Section 13.4(a).

“**EI**” means Edison Electric Institute.

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Electric Metering Devices**” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“**Energy**” means electrical energy.

“**Enforceability Opinion**” means a reasoned opinion of Seller’s outside legal counsel in a form reasonably acceptable to, and addressed to, Buyer as to the enforceability and due authorization of this Agreement.

“**Environmental Attributes**” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated that are (a) at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Facility of Energy during the Delivery Term or any Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the

aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including without limitation any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto), or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable Energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (i) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Energy production from any portion of the Facility, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (ii) depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or environmentally clean Energy, and (iii) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“**Environmental Attribute Reporting Rights**” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time, or any successor statute or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“**Environmental Attributes Value**” means the value of Environmental Attributes purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such index is not available, the value of the Environmental Attributes as determined by the average of three (3) nationally-recognized broker quotes for Environmental Attributes that meet the definition of Environmental Attributes set forth in this Agreement; *provided* that such index pricing or broker quotes shall relate to Environmental Attributes that are derived from comparable vintage and generation technology as the Environmental Attributes that are being replaced, and are from a generator that qualifies as an “eligible renewable energy resource” within the meaning of Section 399.16(b)(1)(A) of the California Public Utilities Code at the time of such pricing or broker quotes, as applicable.

“**EPA**” means the Environmental Protection Agency and any successor agency.

“**EPC Contractor**” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller’s; *provided, however*, that Seller or Seller’s affiliate(s) may serve as EPC Contractor.

**“EPS Compliance”** or **“EPS Compliant,”** when used with respect to the Facility, means that the Facility satisfies both the PUC Performance Standard and the CEC Performance Standard in effect at the time; provided, if it is impossible for the Facility to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the Facility shall be deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the PUC Performance Standard in effect at the time that it is possible for the Facility to satisfy while at the same time satisfying the CEC Performance Standard in effect at the time.

**“EPS Law”** means Sections 8340 and 8341 of the California Public Utilities Code as amended from time to time or any successor statute.

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

**“Facility”** means the 15 MW (ac) solar photovoltaic power generating facility described in Appendix B-1 and depicted on Appendix B-2, including all property interests and related transmission and other facilities.

**“Facility Assets”** has the meaning set forth in Section 14.25(a).

**“Facility Energy”** means Energy generated by the Facility, less station load and transmission losses to the Point of Delivery, as measured by CAISO-approved Electric Metering Devices.

**“Facility Lender”** means any financing party providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility (including pursuant to the consummation of a sale-leaseback transaction) or purchasing equity ownership interests of Seller or its Affiliates, any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

**“Facility Lender Consent”** has the meaning set forth in Section 13.3.

**“Facility Site”** means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-1 and Appendix B-2 where the Facility is or will be located

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

**“Force Majeure”** has the meaning set forth in Section 14.6(b).

**“Force Majeure Notice”** has the meaning set forth in Section 14.6(a).

**“Forced Outage”** means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

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

**“Gains”** has the meaning set forth in Section 13.4(f)(i).

**“GAAP”** means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

**“Generator Interconnection Agreement”** means, with respect to the Facility, that certain Clustering Large Generator Interconnection Agreement, dated as of July 8, 2013, between Seller, RE Columbia Interconnection Manager LLC, RE Columbia, LLC, RE Yakima LLC, RE Clearwater LLC, and Southern California Edison Company for the interconnection of such Facility into the Transmission System.

**“Governmental Authority”** means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term “Governmental Authority” shall not include either Party.

**“Guaranteed Commercial Operation Date”** means December 31, 2014.

**“Guaranteed Generation”** means, with respect to each Contract Year, 80% of the Annual Contract Quantity of such Facility for such Contract Year, which amount shall be reduced by the aggregate amount of Deemed Generated Energy during all Seller Excused Hours during such Contract Year with respect to such Facility.

**“IEEE”** means the Institute of Electrical and Electronics Engineers.

**“Indemnitees”** has the meaning set forth in Section 14.19(a).

**“Independent Manager”** means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (i) a member, stockholder, equityholder, director, manager (except as the Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller, or any Affiliate of Seller; (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Seller, any member of Seller, or any Affiliate of Seller (other than for serving as Independent Manager of Seller), (iii) a Person controlling or under common control with any such stockholder, equityholder, partner, manager, customer, supplier or other like Person, or (iv) a member of the immediate family of any such member, stockholder, equityholder, director, officer, employee, manager, partner, customer, supplier or other like Person.

**“Initial Delivery Date”** means the date that Seller first delivers Facility Energy to the Point of Delivery.

**“Insurance”** means the policies of insurance as set forth in Appendix F.

**“Integration Cost Charge Code”** means a Charge Code in the Settlement Statement issued by the CAISO relating to the integration of intermittent resource generation into the CAISO grid or the management of such intermittent energy resources.

**“Interest Rate”** has the meaning set forth in Section 11.3.

**“ISA”** means the Instrument Society of America.

**“Joint Powers Agreement”** means the “Southern California Public Power Authority Joint Powers Agreement” entered into pursuant to the provisions of the Act among Buyer and Buyer’s members, dated as of November 1, 1980, as amended or modified from time to time.

**“Key Milestone”** means a Milestone for which liquidated damages are provided in Appendix I.

**“Lessor”** means any lessor of real property for the Facility pursuant to a Site Control Document.

**“Licensed Professional Engineer”** means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of California and otherwise qualified to perform the work required hereunder.

**“Lien”** means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including any option, of any other Person in or with respect to any real or personal property.

**“Local Capacity Requirement Attributes”** means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

**“Losses”** has the meaning set forth in Section 13.4(f)(ii).

**“Major Maintenance Blockout”** has the meaning set forth in Section 4.4(a).

**“Milestone”** has the meaning set forth in Section 3.6(a).

**“Milestone Date”** has the meaning set forth in Section 3.6(a).

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

“**Month**” means a calendar month commencing at 00:00 Pacific Prevailing Time on the first day of such month and ending at 24:00 Pacific Prevailing Time on the last day of such month.

“**MW**” means megawatt in alternating current, or AC.

“**MWh**” means megawatt-hours.

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

“**Non-Defaulting Party**” has the meaning set forth in Section 13.4(a).

“**Notice to Proceed**” means the notice provided by Seller to EPC Contractor by which Seller authorizes EPC Contractor to begin construction of the Project without any delay or waiting periods.

“**Notifying Party**” has the meaning set forth in Section 14.3(a).

“**O&M Agreement**” means the agreement for the provision of operation and maintenance services for the Facility entered into or to be entered into by and between Seller and a Qualified Operator.

“**Outside Commercial Operation Date**” means December 31, 2015, which date shall not be subject to extension of any kind (except as provided in Section 3.5).

“**Pacific Prevailing Time**” means the local time in Riverside, California.

“**Participating Members**” means the City of Azusa, the City of Pasadena, and the City of Riverside.

“**Party**” or “**Parties**” has the meaning set forth in the preamble of this Agreement.

“**Performance Security**” means the Project Development Security or Delivery Term Security for the Facility, together or individually, as applicable.

“**Permits**” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery of Products from the Facility, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the CEQA Determinations and the Permits described in Appendix B-1.

“**Permitted Encumbrances**” means (a) the Lien of any Facility Lender on the Facility and (b) other Liens secured by, or encumbrances on, the Facility that at any time do not exceed

Ten Million Dollars (\$10,000,000) in the aggregate, and that also satisfy one or more of the following criteria: (i) any Lien approved by Buyer's Authorized Representative in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (ii) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, (iii) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, (iv) Liens of any judgment, if such judgment shall not have remained undischarged or unstayed on appeal for more than three (3) Months, (v) encumbrances consisting of zoning restrictions, licenses, easements, restrictions on the use of the Site and minor defects and irregularities in title which do not materially impair the use of the Site, the Facility or any portion thereof by Seller or materially impact the value of the Site, the Facility or any portion thereof, (vi) rights arising under the Site Control Documents, or (vii) other Liens incidental to the conduct of Seller's business or the ownership of its property that were not incurred in connection with the borrowing of money or obtaining advances of credit and do not materially detract from the value of the Facility, or any portion thereof, or its use.

**"Person"** means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

**"Point of Delivery"** means the CAISO Pricing Node (as defined in the CAISO Tariff) to be established by the CAISO at the 220kV bus of Southern California Edison Company's Windhub Substation near the existing CAISO Pricing Nodes Windhub\_2\_B1 and Windhub\_2\_N032 and to be identified by notice from Seller to Buyer prior to the Commercial Operation Date.

**"Pre-Certification Period"** has the meaning set forth in Section 6.1(e).

**"Present Value Rate"** means, at any date, the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally-recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

**"Primary Site Control Documents"** means (a) the lease to be entered into between RE Columbia Two LandCo LLC and Seller and (b) the Shared Facilities Agreement.

**"Products"** means any and all Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the forwarding that are or can be produced by or are associated with the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, and renewable energy credits. The Products shall meet the standard of "portfolio content category 1" as defined by RPS Law.

**"Project Development Security"** has the meaning set forth in Section 5.7(a).

**“Proposed Purchase Notice”** has the meaning set forth in Section 14.25(b).

**“Proposed Sale Notice”** has the meaning set forth in Section 14.25(b).

**“Prudent Utility Practices”** means those practices, methods, and acts, that are commonly used by a significant portion of the solar-powered electric generation industry in prudent engineering and operations to design and operate electric equipment (including solar-powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, WECC, as each may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices are not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.

**“Public Utilities Code”** means the Public Utilities Code of the State of California, as may be amended from time to time.

**“PUC”** means the California Public Utilities Commission and any successor thereto.

**“PUC Performance Standard”** means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

**“QRE”** has the meaning set forth in Section 8.4.

**“Qualified Buyer Assignee”** means a Participating Member, any other non-participating member of Buyer or a third party Person that is rated (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P, or (ii) “A3” or higher by Moody’s or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s.

**“Qualified Issuer”** means a Person that (a) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or (ii) “A3” or higher by Moody’s or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s; or (b) is listed on Appendix E-2, as such list may be modified by the Authorized Representatives of the Parties in accordance with Section 5.7(h).

**“Qualified Operator”** means (a) a Person reasonably acceptable to Buyer that has at least three (3) years of operating experience with at least two (2) utility-scale solar projects of 10 MW ac or higher, (b) any Person identified on Appendix H or any such Person’s Affiliates or successors or (c) any other Person reasonably acceptable to Buyer.

**“Qualified Transferee”** means a Person that (a) has financial qualifications equivalent to Seller’s financial qualifications as of the Effective Date and agrees to operate the Facility by a Qualified Operator or (b) is reasonably acceptable to Buyer.

**“Quality Assurance Program”** has the meaning set forth in Section 5.4.

**“REC” or “Renewable Energy Credit”** means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag”) for which the owner of the REC can prove that it has purchased renewable Energy.

**“Recipient Party”** has the meaning set forth in Section 14.3(a).

**“Remedial Action Plan”** has the meaning set forth in Section 3.6(a).

**“Remaining Term”** means, at any date, the remaining portion of the Delivery Term at that date without regard to any early termination of this Agreement.

**“Replacement Energy”** means (a) Energy produced by a facility other than the Facility that, at the time delivered to Buyer, is (i) both RPS Compliant and EPS Compliant, (ii) qualifies under Public Utilities Code 399.16(b)(1), and (iii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided, and (b) Capacity Rights, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Energy is being provided.

**“Replacement Price”** means the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy, or, absent such a purchase, (a) the SP-15 Price, plus (b) the price of the Environmental Attributes that would have been generated by the Facility valued at the Environmental Attributes Value, plus (c) the value of Capacity Rights, if any, equivalent to those that would have been provided by such Facility, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Buyer.

**“Requirements”** means, collectively, (a) any standards or requirements of ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, Cal-OSHA, Uniform Building Code, Uniform Plumbing Code applicable to the design or construction of the Facility, (b) any applicable local county fire department standards or codes, (c) Prudent Utility Practices, (d) all applicable Requirements of Law, (e) Seller’s Quality Assurance Program, and (f) all other requirements of this Agreement.

**“Requirement of Law”** means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

**“Resource Adequacy Attributes”** means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyer with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity, and that are

associated with the electric generating capability of the Facility or another RPS Compliant eligible renewable resource providing Replacement Energy.

“**Right of First Offer**” and “**ROFO**” have the meaning set forth in Section 14.25(a).

“**RPS Compliance**” or “**RPS Compliant**” means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource under the RPS Law and meet the requirements of Public Utilities Code Section 399.16(b)(1), as amended from time to time and any successor statute.

“**RPS Compliance Period**” means each “Compliance Period” as defined in California Public Utilities Code Section 399.30(c).

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

“**SCADA**” means the supervisory control and data acquisition system for the Facility.

“**Schedule**” or “**Scheduling**” means the actions of Seller and Buyer, their Authorized Representatives, and their Transmission Providers, if applicable, of notifying, requesting and confirming to the CAISO the amounts of Facility Energy and Replacement Energy expected to be delivered hourly at the Point of Delivery on any given date during the Delivery Term, all in the manner contemplated by the CAISO Tariff.

“**Scheduled Outage**” means any outage affecting more than ten percent (10%) of the Contract Capacity other than a Forced Outage.

“**Scheduled Outage Projection**” has the meaning set forth in Section 4.4(a).

“**Scheduler**” means the Persons conducting Scheduling for each Party. The contact information for each Party’s Scheduler is set forth in Appendix J.

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

“**Seller**” has the meaning set forth in the preamble of this Agreement.

“**Seller Excused Hour**” means an hour during which Seller is unable to produce or deliver Facility Energy from the Facility as a result of (a) a curtailment under Section 7.5, (b) a Forced Outage, (c) Buyer’s failure to perform, or (d) Force Majeure.

“**Seller Parties**” means Seller and any Affiliates of Seller executing any Ancillary Document, including any such Affiliate providing Performance Security, now or hereafter in effect.

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

“**Shared Facilities Agreement**” means that certain Cotenancy and Shared Facilities Agreement to be entered into by and among RE Columbia LLC, a Delaware limited liability company, RE Columbia Two LLC, a Delaware limited liability company, RE Yakima LLC, a Delaware limited liability company and Seller.

“**Shortfall Energy**” has the meaning set forth in Section 9.1.

“**Shortfall Liquidated Damages**” has the meaning set forth in Section 9.3.

“**Shortfall Makeup Period**” means the Contract Year following the Contract Year during which Shortfall Energy accrues.

“**Site**” means the Facility Site and the Transmission and Roadway Site.

“**Site Control**” means, with respect to the Facility, that Seller: (a) owns or leases the Facility Site; (b) is the grantee of one or more easements or rights of way with respect to the Transmission and Roadway Site, which, in each case, permits Seller to perform its obligations under this Agreement and the Ancillary Documents; (c) is the lessee under one or more site leases with respect to the Facility Site, which, in each case, permits Seller to perform its obligations under this Agreement and the Ancillary Documents; and/or (d) otherwise has demonstrable exclusive right to control the Facility Site and a non-exclusive easement or right of way with respect to the use of the Transmission and Roadway Site, in each case, so as to permit Seller to perform its obligations under this Agreement and the Ancillary Documents to which it is a party.

“**Site Control Documents**” means the Primary Site Control Documents and all other real property leases, easements, agreements, and ordinances for the Site that together establish Site Control.

“**Site Control Milestone Date**” means the date specified on Appendix I with respect to the attainment of Site Control, as may be extend pursuant to Section 3.6.

“**SP-15 Price**” means the CAISO SP-15 Trading Hub Day-Ahead Market prices, as published by the California ISO Open Access Same-time Information System. For the avoidance of doubt, the SP-15 Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

“**Special Project Entity**” means a limited liability company which:

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a

Special Project Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction.

(b) was, is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to the acquisition, development, ownership, management or operation of the Facility.

(d) has not had, does not have and will not have, any assets other than those related to the Facility;

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(f) has maintained and will maintain its financial statements, bank accounts, accounts, books, resolutions, agreements and records separate from any other Person and has filed and will file its own tax returns (except to the extent treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Seller and not as a division, department or part of any other Person;

(h) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(i) has not made and will not make loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) or made any gifts or fraudulent conveyances to any Person;

(j) has not identified and will not identify its members, or any Affiliate of any member, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person;

(k) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm’s-length transaction with an unrelated third party;

(l) on and after the Construction Start Date, will not have any obligation to indemnify and will not indemnify its managers, members, and officers, as the case may be, other than (i) the Independent Manager and (ii) natural Persons who are officers, managers, or members of Seller or any Affiliate of Seller;

(m) it has considered and shall consider the interests of its creditors in connection with all limited liability company actions;

(n) on and after the Commercial Operation Date, does not and will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents, including the provision requiring that there be an Independent Manager at all times, and has done or caused to be done and will do all things necessary to preserve its existence;

(p) has not commingled, and will not commingle, its funds or assets with those of any Person and has not participated and will not participate in any cash management system with any other Person;

(q) has held and will hold its assets in its own name and conducted and will conduct all business in its own name;

(r) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; *provided, however*, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(s) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(t) has observed and will observe all limited liability company formalities;

(u) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(v) has not acquired and will not acquire obligations or securities of its members or any Affiliate;

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(x) has maintained and used, now maintains and uses, and will maintain and use separate stationery, invoices, and checks bearing its name; such stationery, invoices, and checks utilized by it or utilized to collect its funds or pay its expenses have borne and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being its agent;

(y) has not pledged and will not pledge its assets for the benefit of any other Person;

(z) on and after the Construction Start Date, will have articles of organization, a certificate of formation or an operating agreement, as applicable, that provides that it will not, without the affirmative vote of its Independent Manager: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets (other than in connection with a transfer to a Facility Lender); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(aa) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(bb) has and will have no indebtedness other than (i) the indebtedness due to the Facility Lender providing construction financing for the Facility and any indebtedness in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, leasing and operation of the Facility and its routine administration, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Ten Million Dollars (\$10,000,000) in the aggregate, and (iv) such other liabilities that are permitted pursuant to this Agreement.

“**S&P**” means Standard & Poor’s Financial Services LLC.

“**Subcontract**” means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than Buyer, which Person is providing goods or services to Seller that are related to the performance of Seller’s obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a “subcontract” in the policies, ordinances, codes or laws with which Seller must comply pursuant

to this Agreement, or that is made with a “subcontractor” as such term is used or defined in such policies, ordinances, codes, or laws.

“**Subcontractor**” means any party to a Subcontract with Seller.

“**Successor Entity**” has the meaning set forth in Section 13.1(g).

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

“**Tax**” or “**Taxes**” means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

“**Termination Notice**” has the meaning set forth in Section 13.4(a).

“**Termination Payment**” means a payment in an amount equal to the Non-Defaulting Party’s (a) Losses, plus (b) Costs, minus (c) Gains; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

“**Test Energy**” means Facility Energy that is delivered to the Point of Delivery prior to the Commercial Operation Date.

“**Transmission and Roadway Site**” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-1 and Appendix B-2 where any transmission lines and roadways servicing the Facility are or will be located.

“**Transmission Providers**” means Persons operating the Transmission System to and from the Point of Delivery.

“**Transmission Services**” means the transmission and other services required to transmit Facility Energy to or from the Point of Delivery.

“**Transmission System**” means the facilities utilized to provide Transmission Services.

“**Unexcused Cause**” has the meaning set forth in Section 14.6(b).

“**UNFCCC**” has the meaning set forth in the definition of “Environmental Attributes.”

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

“**WREGIS**” means Western Renewable Energy Generation Information System.

“**WREGIS Certificates**” has the meaning set forth in Section 8.4.

“**WREGIS Operating Rules**” means the rules describing the operations of the WREGIS, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

**Section 1.2 Interpretation.** In this Agreement, unless a clear contrary intention appears:

- (a) time is of the essence
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person's successors and assigns (regardless of whether such Person's successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, instrument, tariff or Requirement means such agreement, document, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (g) "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term, regardless of whether words such as "without limitation" are expressly included in the applicable provision;
- (i) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including";
- (j) reference to time shall always refer to Pacific Prevailing Time; and reference to any "day" shall mean a calendar day, unless otherwise indicated; and
- (k) the term "or" is not exclusive, regardless of whether "and/or" is used in the applicable provision.

**ARTICLE II**  
**EFFECTIVE DATE, TERM, AND EARLY TERMINATION**

**Section 2.1 Effective Date.** This Agreement shall be effective on the date that both Parties have executed this Agreement (the “*Effective Date*”).

**Section 2.2 Term.**

(a) **Agreement Term.** The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and end on the last day of the Delivery Term or upon the earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Initial Delivery Date and ending at 11:59 pm on the day before the twentieth (20th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

**Section 2.3 Survivability.** The provisions of this Article II, Article XII, Article XIII, Section 14.19 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries (including the provision to Buyer of Replacement Energy or Shortfall Liquidated Damages) related to any period prior to termination of this Agreement.

**Section 2.4 Early Termination.**

(a) **Early Termination by Mutual Agreement.** This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Failure to Provide Performance Security.** Buyer may terminate this Agreement if Seller fails to deliver Project Development Security within ten (10) days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.4.

(d) **Early Termination for Failure to Achieve a Key Milestone.** Buyer may terminate this Agreement pursuant to Section 3.6(c).

(e) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date, except as set forth in Section 3.5.

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer may terminate this Agreement effective upon notice to Seller if the Facility is not CEC Certified

by the date that is six (6) months following the Commercial Operation Date, *provided that* Buyer may not terminate this Agreement if Seller (i) demonstrates to Buyer's reasonable satisfaction that the failure to obtain CEC Certification is not due to any act or omission by Seller, (ii) has provided the Delivery Term Security, and (iii) is otherwise in compliance with the terms and conditions of this Agreement.

(g) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 14.6(c).

(h) **Exercise of First Right of Offer.** If Buyer accepts the Right of First Offer for any proposed sale of the Facility, this Agreement shall terminate effective upon the Closing with respect to the Right of First Offer.

(i) **[Reserved]**.

(j) **Early Termination for Shortfall.** This Agreement may be terminated pursuant to Section 9.5.

(k) **Early Termination Due to Environmental Effects.** This Agreement may be terminated by Buyer pursuant to Section 3.1.

(l) **Effect of Termination.** Any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination; *provided that* the unused portion of the Project Development Security or Delivery Term Security, as applicable, if any shall be returned to Seller within ten (10) Business Days after any such termination in accordance with Section 5.7(c).

### **ARTICLE III DEVELOPMENT OF THE FACILITY**

**Section 3.1 CEQA Determinations.** Buyer shall (a) have all rights, powers and responsibilities of a responsible agency under CEQA to participate in the CEQA review of the Facility, and (b) on or before the fortieth (40th) day after the lead agency's filing of a notice of determination under CEQA, issue one of the following: (i) a notice confirming that Buyer has complied with CEQA guidelines sections 15096(a), (f), (g) and (h) by considering the CEQA Documents, adopting applicable alternatives or mitigation measures, making findings, and filing a notice of determination for its approval of the purchase of Facility Energy, or (ii) a notice that Buyer, based upon its independent review of the CEQA Documents, has decided not to approve the purchase of Facility Energy and to terminate this Agreement, due to significant adverse environmental effects from the Facility.

**Section 3.2 Project Design.** Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements, including the characteristics and other requirements for the Facility set forth in Appendix B-1, and also subject to any conditions imposed by any responsible agency as part of the CEQA review of the Facility.

**Section 3.3 Site Confirmation.** Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected and become familiar with the Site and its surface

physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer. The foregoing shall not restrict Seller's right to claim Force Majeure hereunder to the extent the requirements therefor hereunder are satisfied.

**Section 3.4 Contract Provisions.** Seller shall cause to be included in each Subcontract provisions that provide:

(a) Buyer with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to reasonable safety precautions) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and

(b) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof.

**Section 3.5 Certification of Commercial Operation Date.** Seller shall provide Buyer with notice when Seller believes that all conditions precedent to achieving Commercial Operation of a Facility as specified in the definition of "**Commercial Operation**" have been satisfied. Buyer shall either accept the notice, or reject the notice if reasonable cause exists, provided that Buyer shall not unreasonably withhold, delay or condition any acceptance of such notice, and in any event shall provide in reasonable detail a written description of the reasons for any rejection. Buyer shall in all cases respond to any such notice within ten (10) Business Days after delivery by Seller and shall be deemed to have accepted such notice if Buyer fails to respond in such time. If Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. The Commercial Operation Date shall be deemed to relate back to the date of any Seller notice of Commercial Operation that is accepted (or deemed accepted) by Buyer. So long as Seller provides, in good faith, notice to Buyer of the achievement of Commercial Operation prior to the Outside Commercial Operation Date, Buyer may not terminate this Agreement under Section 2.4(e) for failure to achieve the Commercial Operation Milestone under Section 3.6 so long as (a) Buyer either (i) accepts such notice or (ii) rejects such notice due to minor defects or deficiencies that do not affect the ability of the Facility to be placed in service and operated in accordance with this Agreement, and (b) Seller promptly corrects such minor defects or deficiencies identified by Buyer. In no event shall any

extension of the Outside Commercial Operation Date under this Section 3.5 affect the amount of the Contract Price, notwithstanding any tax benefits lost as a result of the delay of the Commercial Operation Date.

### **Section 3.6 Milestone Schedule.**

(a) Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each milestone, a “*Milestone*” and each date, a “*Milestone Date*”). Until the Commercial Operation Date, Seller shall provide Buyer a report, which report shall be provided on a quarterly basis until the date that is six (6) months prior to the scheduled Commercial Operation Date, at which time, such reports shall be provided on a Monthly basis, and which shall include (i) a description of the Site plan for the Facility, (ii) a description of any planned changes to the Facility or Site plan since the previously delivered report, (iii) a bar chart schedule showing progress to achieving the remaining Milestones, (iv) a chart showing the critical path schedule of major items and activities, (v) a summary of activities at the Facility during the previous Month, (vi) a forecast of activities during the then-current Month, (vii) a list of any issues that could impact Seller’s achievement of Milestones by the applicable Milestone Dates, and (viii) pictures, in sufficient quantity and of appropriate detail, documenting construction and startup progress with respect to the Facility. If Seller anticipates that it will not achieve a Milestone by the applicable Milestone Date (as such date may be extended pursuant to this Section 3.6), Seller shall promptly prepare and deliver to Buyer a remedial action plan (“*Remedial Action Plan*”) which shall set forth (a) the anticipated period of delay, (b) the basis for such delay, (c) an outline of the steps that Seller is taking to address the delay, (d) a proposed revised date for achievement of the applicable Milestone and (e) such other information and in such detail as may be reasonably requested by Buyer. Except as set forth in Section 3.6(c), Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan *provided, however*, that the foregoing shall not limit Buyer’s right to exercise any right or remedy available under this Agreement or at law or in equity for any other Default occurring concurrently with or before or after Seller’s delay in achievement of the applicable Milestone.

(b) Each Milestone Date (other than the Outside Commercial Operation Date) shall be extended, on a day-for-day basis to the extent Seller is unavoidably delayed in achieving such Milestone due to (i) the failure by Buyer to perform any covenant or obligation under this Agreement or (ii) Force Majeure.

(c) If Seller fails to achieve any Key Milestone by the Milestone Date (as extended pursuant to Section 3.6(b)), Seller shall pay liquidated damages to Buyer in an amount equal to (i) the number of days between the Milestone Date and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer), multiplied by (ii) the applicable daily liquidated damage amount set forth for such Key Milestone in Appendix I (the “*Daily Delay Damages*”), subject to a maximum amount for any Key Milestone equal to the daily damage amount in (ii) above multiplied by three hundred sixty-five (365) days, at which point Buyer shall have the right in its sole discretion, to either (A) terminate this Agreement, or (B) allow Seller to continue to pay liquidated damages to Buyer, during which time Buyer shall not terminate the Agreement. If Seller, notwithstanding having failed to timely achieve any other Key Milestone, is able to achieve the Commercial Operation Date on or before the

Guaranteed Commercial Operation Date (and prior to the exercise by Buyer of its termination right hereunder), then Buyer shall refund to Seller any amounts previously paid as Daily Delay Damages.

(d) In no event shall the Commercial Operation Date be extended beyond the Outside Commercial Operation Date, which date shall not be subject to extension except by mutual agreement of the Parties.

(e) Seller may change the Guaranteed Commercial Operation Date to a date that is earlier than the then-scheduled Guaranteed Commercial Operation Date by providing Buyer with notice at least six (6) months prior to the new Guaranteed Commercial Operation Date.

(f) The damages that Buyer would incur due to Seller's failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyer's sole right and remedy, other than termination of the Agreement, for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Key Milestone.

**Section 3.7 Decommissioning and Other Costs.** Unless a Closing occurs pursuant to the ROFO, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of such Facility without regard to the timing or cause of the decommissioning or demolition.

#### **ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY**

**Section 4.1 General Operational Requirements.** Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements and (ii) in a manner that is reasonably likely to achieve the Annual Contract Quantity and result in a useful life for the Facility of not less than the Delivery Term;

(b) At its sole expense, operate and maintain the Facility using a Qualified Operator in accordance with the Requirements;

(c) Use qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(d) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System; and

(e) Comply with operating and maintenance standards recommended or required by the Facility's equipment suppliers.

**Section 4.2 Operation and Maintenance Plan.** Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

**Section 4.3 Environmental Credits.** Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law.

**Section 4.4 Scheduled Outage.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified times of each calendar year (such periods, the "**Major Maintenance Blockout**") in accordance with Prudent Utility Practices and this Section 4.4; *provided* that the Major Maintenance Blockout during any calendar year shall not exceed eighty-four (84) days, which number shall be prorated (i) for the calendar year during which the Commercial Operation Date occurs based on the number of days remaining in such calendar year as of the Commercial Operation Date, and (ii) the calendar year during which the Delivery Term expires or terminates based on the number of days occurring in such calendar year before such expiration or termination date. No later than thirty (30) days prior to the anticipated Commercial Operation Date and the commencement of each calendar year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices; *provided* that Seller shall be permitted to perform scheduled and unscheduled maintenance on the Facility during Major Maintenance Blockouts during such hours in which solar irradiance levels are insufficient to permit the production of Energy if such maintenance is permitted under the CAISO Tariff and conducted in accordance with all applicable Requirements (including, for avoidance of doubt, the requirements of the Transmission Provider). No later than thirty (30) days prior to the anticipated Commercial Operation Date and the commencement of each calendar year thereafter, Seller shall provide Buyer with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "**Scheduled Outage Projection**") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer's Authorized Representative consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated Facility capacity, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Authorized Representative of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally-scheduled date of the Scheduled Outage. Seller shall use commercially

reasonable efforts to accommodate reasonable requests of Buyer or Buyer's Authorized Representative with respect to the timing of Scheduled Outages and shall, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage affecting at least ten percent (10%) of the Contract Capacity, to the extent practicable, Seller shall notify Buyer within two (2) hours after the commencement of the Forced Outage and, in any event, within seven (7) days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

## **ARTICLE V COMPLIANCE DURING OPERATIONS; GUARANTEES**

**Section 5.1 Guarantees.** Seller warrants and guarantees that it will perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in accordance with the Requirements. Seller warrants that, at the Commercial Operation Date, the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction. Seller further warrants that, throughout the Delivery Term: (a) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (b) the Facility will be designed, constructed and tested in compliance with the Requirements. Seller also warrants and guarantees that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in compliance with all Requirements applicable to the Facility as of the Effective Date. Without limiting the foregoing, Seller shall promptly repair and/or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall exercise commercially reasonable efforts to timely undertake all updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software, required by Prudent Utility Practice. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

**Section 5.2 Buyer's Right to Monitor in General.** Upon no less than ten (10) Business Days' notice to Seller, Buyer shall have the right, and Seller shall permit Buyer and its Authorized Representative, advisors, engineers and consultants, to observe, inspect, monitor, and have a representative present to witness the operations and activities at each Site before and after the applicable Commercial Operation Date, including (a) reviewing and monitoring all initial performance tests during Facility start-up and all material tests required under the Subcontracts to be performed prior to each Milestone, and (b) performing such detailed examinations and inspections as, in the judgment of Buyer, are appropriate and advisable to determine that the

Facility equipment and ancillary components of the Facility have been installed in accordance with the Requirements; *provided, however*, that ten (10) Business Days' notice shall not be required if Buyer's inspection and monitoring is due to an emergency situation at the Site, a Facility curtailment, or any other occurrence causing an operational concern to Buyer with respect to the Facility, in which case Buyer shall provide as much advance notice as is practicable under the circumstances. Seller shall, or shall cause its contractors to, provide at least fifteen (15) Business Days' notice to Buyer before any test referenced in the previous sentence is scheduled to begin. The presence of Buyer and Buyer's Authorized Representative on the Site shall be at Buyer's sole risk and expense. While at the Site, Buyer and Buyer's Authorized Representative shall (i) comply with all applicable Requirements and Seller's written Site safety rules and (ii) not interfere with Seller's normal commercial operations. Seller shall cause its personnel, consultants, and contractors to be available to Buyer and its Authorized Representatives, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing, performance, operation, or maintenance thereof. Buyer shall be limited to no more than ten (10) such visits to each Facility each Contract Year, except that visits made by Buyer due to emergency situations, Facility curtailments, or any occurrence causing an operational concern to Buyer with respect to the Facility shall not count toward such ten (10) visit limit.

**Section 5.3 Effect of Review by Buyer.** Any review by Buyer or Buyer's Authorized Representative of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller) nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer or Buyer's Authorized Representative of the Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

**Section 5.4 Quality Assurance Program.** Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as Appendix G, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

**Section 5.5 No Liens.** Except as otherwise permitted by this Agreement, the Facility shall be owned by Seller during the Agreement Term. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer's Authorized Representative.

**Section 5.6 Reporting and Information.** Seller shall provide to Buyer (a) Monthly reports of the operation of each Facility, which shall include (i) a performance summary of the Month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor, and availability, (ii) descriptions of the weather, reasons for any downtime, maintenance or repairs, and Curtailment Periods and other curtailment events during the applicable Month, and (iii) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operations of the Facility, as Buyer's Authorized Representative may, from time to time, reasonably request.

**Section 5.7 Performance Security.**

(a) Within ten (10) days after the Effective Date, Seller shall furnish to Buyer one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E-1, cash (to be held in an escrow), or a combination of the two, in the aggregate amount of Seven Hundred Twenty-Five Thousand Dollars (\$725,000.00), which shall guarantee Seller's obligations under this Agreement (the "**Project Development Security**"). Seller shall maintain the Project Development Security for each Facility until Seller posts the Delivery Term Security for such Facility pursuant to Section 5.7(b), or until Buyer is required to return the Project Development Security under Section 5.7(c) below.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E-1, cash (to be held in an escrow account), or a combination of the two, and in the aggregate amount of Two Million, Three Hundred Fifty Thousand Dollars (\$2,350,000.00), which, in each case, shall guarantee Seller's obligations under this Agreement ("**Delivery Term Security**"); *provided* that Seller may elect to apply the Project Development Security toward the Delivery Term Security. From and after the Commercial Operation Date, Seller shall maintain the Delivery Term Security until the end of the Delivery Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.7(c) below.

(c) Buyer shall return the unused portion of the (i) Project Development Security, if any, to Seller within ten (10) Business Days after (A) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security toward the Delivery Term Security, or (B) the effective date of any earlier termination, so long as damages are no longer due and owing to Buyer, and (ii) Delivery Term Security, if any, to Seller promptly after the following have occurred: (A) the Agreement Term has ended, and (B) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(d) Buyer may draw on the Performance Security (i) at any time following the accrual of Daily Delay Damages hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to pay Buyer the Shortfall Liquidated Damages prior to the end of the Shortfall Makeup Period as provided in Section 9.3, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder in the amount of such unpaid payment; *provided* that, in the case of a draw under clause (iii), any such amount shall have been invoiced to Seller, shall be past due, and shall not be the subject of a good faith dispute between the Parties. Within five (5)

Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.7(a) or Section 5.7(b).

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event involving an issuer of the Performance Security within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, Buyer may require that Seller replace the Performance Security from the Person that has suffered the Downgrade Event in accordance with Section 5.7(g).

(f) Seller shall provide replacement Performance Security in accordance with Section 5.7(g) after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes bankrupt.

(g) If replacement Performance Security is required due to (i) a Downgrade Event, or (ii) upon the occurrence of any of the events described in Section 5.7(f), then Seller shall, within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies, Seller of the need for replacement Performance Security, provide, or cause to be provided, (1) a letter of credit substantially in the form of Appendix E-1 from a Qualified Issuer, or (2) cash (to be held in an escrow account), in each event, in the amount required under this Section 5.7.

(h) Buyer shall notify Seller within fifteen (15) Business Days after (i) Buyer becomes aware of any Person listed on Appendix E-2 that experiences a Downgrade Event and therefore are no longer Qualified Issuer, or (ii) Buyer has elected to terminate any relationship with such Person pursuant to directives from any Governmental Authorities applicable to Buyer, after which the Parties' Authorized Representatives shall promptly thereafter coordinate to remove any Person with whom Buyer has terminated its relationship, or who has experienced a Downgrade Event, from Appendix E-2 and identify and mutually agree to amend Appendix E-2 to include additional Qualified Issuers. The Authorized Representatives of the Parties may also periodically identify and mutually agree to amend Appendix E-2 to include different Qualified Issuers.

(i) Seller shall, from time to time as requested by Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Requirements of Law the Performance Security (including any Ancillary Documents required therefor) and the rights, Liens and priorities of Buyer with respect to such Performance Security.

(j) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

**ARTICLE VI**  
**PURCHASE AND SALE OF PRODUCT**

**Section 6.1 Purchases by Buyer.** With respect to each Facility:

(a) Prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Test Energy for the Contract Price set forth in Section 1 of Appendix A.

(b) Except as set forth in Section 6.1(e), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Facility Energy (other than Excess Energy) and Replacement Energy at the Contract Price set forth in Section 2 of Appendix A.

(c) Except as set forth in Section 6.1(e), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Excess Energy at the Contract Price set forth in Section 3 of Appendix A.

(d) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Facility Energy and Replacement Energy that cannot be bid or prescheduled into the CAISO at the Contract Price set forth in Sections 2 and 3 of Appendix A, as applicable.

(e) Notwithstanding the provisions of Section 6.1(a) through Section 6.1(d), during the period of time between the Initial Delivery Date and the day that is one (1) day following the date upon which Seller delivers evidence to Buyer that the Facility is CEC Certified (the "**Pre-Certification Period**"), Buyer shall have the right to retain a portion of any payment to be made to Seller under Sections 6.1(a) through Section 6.1(d) in an amount equal to the difference between (i) the applicable Contract Price, and (ii) SP-15 Price for the respective hours in which Facility Energy was generated. Buyer shall release such retained amount, without interest of any kind, within thirty (30) days following Buyer's receipt from Seller of the CEC certificate confirming that the Facility is CEC Certified, but only to the extent that Buyer is able to apply the RECs generated by the Facility during the Pre-Certification Period towards compliance with Buyer's obligations under RPS Law and the requirements of Public Utilities Code Section 399.16(b)(1) to obtain a "portfolio content category 1" eligible resource.

**Section 6.2 Seller's Failure.** Except as provided in Article IX, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Unless excused by Force Majeure or Buyer's failure to perform, if Seller sells all or any part of the Products required to be delivered by Seller under this Article VI, Article VIII or Article X to a third party, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Products not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt written notice of the Replacement Price together with back-up documentation.

**Section 6.3 Buyer's Failure.** Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy required to be received by Buyer under this Article VI, Article VIII, or Article X, Buyer shall pay Cover Damages, on the date payment would otherwise be due to Seller; *provided that* Seller shall use commercially reasonable efforts to resell any Facility Energy not able to be received by Buyer. "**Cover Damages**" means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Energy not received by Buyer. Seller shall provide Buyer prompt written notice of the Cover Damages together with back-up documentation.

**Section 6.4 Nature of Remedies.** The Parties acknowledge and agree that the damages that Buyer would incur as a result of Seller's failure as described in Section 6.2 or that Seller would incur as a result of Buyer's failure as described in Section 6.3 would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances, and the liquidated damages set forth in Section 6.2 and Section 6.3 are fair and reasonable calculations of such damages. To the extent permitted by law, (a) the remedy set forth in Section 6.2 is in addition to, and not in lieu of, any other right or remedy of Buyer under this Agreement or otherwise, for failure of Seller to sell and deliver the Products as and when required by this Agreement, and (b) the remedy set forth in Section 6.3 is in addition to, and not in lieu of, any other right or remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement.

## **ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS**

### **Section 7.1 In General.**

(a) Seller shall use all reasonable efforts consistent with Prudent Utility Practices and the other provisions of this Agreement to maximize the output of Facility Energy from the Facility. Subject to Buyer's role as Seller's Scheduling Coordinator for the Facility, Seller shall arrange for, and shall bear all risks and benefits associated with, delivery of all Facility Energy and Replacement Energy to and at the Point of Delivery, including the arrangement of and payment for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Test Energy, Facility Energy and Replacement Energy to and at the Point of Delivery at the CAISO grid, including interconnection costs, transmission losses, and the transmission of Facility Energy, and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery; *provided that* Replacement Energy may be delivered at alternative locations as may be mutually agreed by the Parties.

(b) Buyer shall be obligated to pay for all Facility Energy and Replacement Energy delivered to the Point of Delivery, and Buyer shall arrange for, and shall bear all risks associated with, acceptance and transmission of Facility Energy and Replacement Energy from the Point of Delivery, including the arrangement of and payment for Transmission Services from the Point of Delivery at the CAISO grid, and shall Schedule or arrange for Scheduling and

transmission services with its Transmission Providers to deliver Facility Energy and Replacement Energy to Buyer's destination, including charges related to control area services, inadvertent energy flows, transmission losses, the transmission of Facility Energy and Replacement Energy, and otherwise associated with the management of Buyer's load.

**Section 7.2 Forecasting and Scheduling of Energy.** The Authorized Representatives of Buyer and Seller may, following the Effective Date, mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 7.2, by written agreement of both Authorized Representatives in order to comply with all applicable Requirements and requirements of the Transmission Provider, CAISO, NERC, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to such forecasting or Scheduling procedures.

(a) Seller hereby designates Buyer or Buyer's designee to act as Seller's Scheduling Coordinator to effect the Scheduling of Facility Energy and Replacement Energy to and at the Point of Delivery, and Buyer (for itself or its designee) hereby accepts the position of Scheduling Coordinator for the Facility. In such capacity, Buyer shall be responsible for and pay all fees, charges, and other costs necessary to Schedule the receipt of Facility Energy and Replacement Energy from the Point of Delivery. Buyer shall Schedule all Facility Energy and Replacement Energy in a reasonable and prudent manner in accordance with the CAISO Tariff and the Scheduling and forecasting procedures provided in or developed under this Section 7.2, based on the then-most-current forecast of energy provided under the CAISO Intermittent Resource Protocol.

(b) Seller shall submit non-binding forecasts, and any updates to such forecasts, to Buyer or Buyer's Authorized Representative based on the most current forecast of Facility Energy and Replacement Energy. All Scheduling shall be performed in accordance with the applicable CAISO, NERC and WECC operating policies, criteria, and any other applicable guidelines, and shall be subject to approval by Buyer. Seller, at its own cost, shall also install metering, telemetry and control equipment so as to be able to provide Facility Energy to the Point of Delivery and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders.

(i) At least one-hundred twenty (120) days before (a) the scheduled Commercial Operation Date and (b) the beginning of each Contract Year for such Facility, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each Month's average-day deliveries of Facility Energy and Replacement Energy from such Facility, for the following eighteen (18) Months.

(ii) No later than sixty (60) days before the beginning of each Month during the Delivery Term, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Energy, for each such Month.

(iii) No later than ten (10) Business Days before the beginning of each Month during the Delivery Term, Seller or Seller's designee shall provide, or cause to be

provided, to Buyer a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Energy for the following Month.

(iv) On the first Business Day of each calendar week during the Delivery Term, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average deliveries of Facility Energy and Replacement Energy, by hour, for the following fourteen (14) days.

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy and Replacement Energy during the Delivery Term, Seller or Seller's designee shall provide Buyer or Buyer's Authorized Representative with a copy of a non-binding hourly forecast of deliveries of Facility Energy and Replacement Energy for each hour of the immediately succeeding day. A forecast provided a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer or Buyer's Authorized Representative with a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by the Buyer or Buyer's Authorized Representatives, Seller shall provide or cause to be provided to Buyer and Buyer's Authorized Representatives a non-binding preschedule forecast of Facility Energy and Replacement Energy via email. The pre-scheduled amounts of Facility Energy and Replacement Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Facility Energy and Replacement Energy at the time. A forecast provided a day prior to any non-Business Day shall include forecasts for the next day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide Buyer and Buyer's Authorized Representatives with a copy of any and all updates to such forecast of Facility's availability from the then-current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the preschedule plan submitted to Buyer and Buyer's Authorized Representatives.

(vii) In order to allow Buyer to make Schedule changes in conformity with the CAISO Scheduling deadline, Seller shall notify Buyer or Buyer's Authorized Representative via email, telephone, or other mutually acceptable method, of any hourly changes due to a change in Facility availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify Buyer or Buyer's Authorized Representative of other unanticipated changes in availability by email or telephone as promptly as reasonably possible so that an outage report can be completed with the CAISO. Any notice delivered under this Section 7.2(b)(vii) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify Buyer that the outage has ended, the cause of the outage, and the actions

taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

(c) Throughout the Delivery Term of each Facility, Seller shall provide to Buyer the following data on a real-time basis:

(i) Read-only access to meteorological and related solar measurements, megawatt capacity and any other Facility availability information required in accordance with CAISO Intermittent Resource Protocol requirements;

(ii) Read-only access to Energy output information collected by the SCADA system for the Facility; *provided* that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide Energy output information and meteorological measurements to Buyer in four (4)-second intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal; and

(iii) Read-only access to all Electric Metering Devices.

(d) Buyer is authorized to prepare and provide Buyer's Authorized Representative, Buyer's real time operators, and Buyer's Scheduler with continuously updated non-binding hourly forecasts of deliveries of Facility Energy and Replacement Energy for each hour of the succeeding twenty four (24)-hour period, in either electronic format, via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's real time operators, and Buyer's Scheduler, or via email in the form of an excel spreadsheet (or any combination thereof), transmitted on an hourly basis. Seller shall reasonably cooperate with Buyer to attempt to optimize the estimates for such time period two (2) hours prior to such forecasts. Seller shall reasonably cooperate with Buyer to enable such forecasts to be prepared in accordance with mutually agreed upon communications protocols as they are implemented or upgraded from time to time.

### **Section 7.3 CAISO Cost Allocation.**

(a) Buyer, as Scheduling Coordinator, shall be financially responsible for all charges, costs, payments and credits on all Settlements Statements issued by the CAISO except as provided in Section 7.3(b) and Section 7.3(c).

(b) Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement (i) incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement, (ii) incurred by Buyer because of any scheduled outages for which insufficient notice has been provided under this Agreement, or (iii) to the extent arising as a result of Seller's failure to comply with a Curtailment Order under Section 7.5 if such failure results in incremental costs to Buyer.

(c) In addition to any costs or charges for which Seller is liable pursuant to this Agreement, Seller shall also be liable for all charges, costs, payments and credits on all Settlement Statements that meet all of the following four criteria ("*CAISO Integration Amounts*") up to the CAISO Integration Amounts Cost Cap:

- (i) identified as an Integration Cost Charge Code as specified on Appendix M of this Agreement;
- (ii) assessed by the CAISO to Buyer in its capacity as Scheduling Coordinator for the Project;
- (iii) result in a charge on Buyer's Settlement Statement from the CAISO; and
- (iv) are not already charged to Seller under another provision of the Agreement.

For the avoidance of doubt, CAISO Integration Amounts do not include any CAISO or other costs or charges associated with Buyer's receipt of Facility Energy or Replacement Energy at the Point of Delivery or the Scheduling or transmission of Energy from and away from the Point of Delivery (including any costs or charges associated with imbalances from forward Schedules submitted to CAISO), all of which shall be the sole responsibility of Buyer (subject to Section 7.3(b)).

(d) The Parties shall cooperate to establish a protocol (the "*CAISO Integration Amounts Protocol*") for determining which Charge Codes satisfy the definition of an Integration Cost Charge Code and shall update Appendix M from time to time as needed to reflect a complete list of such Charge Codes.

(e) Subject to the CAISO Integration Amounts Cost Cap, CAISO Integration Amounts shall be invoiced in accordance with Article XI and amounts owing to Buyer shall offset against amounts owing to Seller.

**Section 7.4 [Reserved].**

**Section 7.5 Curtailment.**

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery immediately upon notice from Buyer, the CAISO, a Transmission Provider, or any balancing authority or reliability entity (i) during Curtailment Periods, or (ii) in the case of actual or anticipated System Emergencies or over-generation (as defined in the CAISO Tariff) affecting Buyer. If required by the CAISO, a Transmission Provider, or any balancing authority or reliability entity, Seller shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the SCADA system of Seller. Buyer shall not be obligated to pay Seller for the amount of reduced Facility Energy during a Curtailment Period or a curtailment directed by Buyer pursuant to clause (ii) of this Section 7.5(a) except as provided under Section 7.5(c) below.

(b) In addition to the curtailments described in Section 7.5(a), Buyer shall have the right to curtail deliveries of Facility Energy at any time and for the duration specified by Buyer. Buyer shall provide a minimum of ten (10) minutes' notice to Seller of Buyer's request for curtailment under this Section 7.5(b), and Seller shall comply with such request in

accordance with Prudent Utility Practices. In its curtailment notice to Seller, Buyer shall provide Seller the duration of the curtailment period, which shall be for a minimum of thirty (30) minutes, and the time when Buyer requests that Seller resume delivery of Facility Energy to Buyer. To the extent Buyer requests any change in the duration of the requested curtailment period, Seller shall effectuate any such change no later than ten (10) minutes' notice from Buyer's notification to Seller of the proposed change to curtailment. Seller shall respond to Buyer's curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Buyer shall pay Seller the Contract Price for any Deemed Generated Energy during any curtailment under this Section 7.5(b); *provided, however*, Seller shall use commercially reasonable efforts to sell any such Deemed Generated Energy to third parties should Buyer be unable to receive such Deemed Generated Energy and to the extent permitted under the CAISO Tariff. To the extent such Deemed Generated Energy is sold to a third party, (i) Buyer's obligation to pay the Contract Price under this Section 7.5(b) shall be reduced by an amount equal to the net proceeds Seller receives from such sales of Deemed Generated Energy (after subtracting any scheduling fees, wheeling charges, and other associated costs, fees, and reasonable expenses incurred in connection with such sales), and (ii) any Environmental Attributes not sold with such Deemed Generated Energy shall be delivered to Buyer at no additional cost to Buyer.

(c) The Parties shall develop procedures to calculate the estimated amount of curtailed Energy that would have been delivered during a curtailment event under this Section 7.5 based on historical Facility data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data (the "***Deemed Generated Energy***"). The calculation shall be subject to review and approval by Buyer. The Parties acknowledge and agree that Deemed Generated Energy shall include reduced Facility Energy during a Curtailment Period or a curtailment directed by Buyer pursuant to clause (ii) of Section 7.5(a) only if, and only to the extent that, such curtailment results from: (A) the failure by Buyer to perform its obligations hereunder as the Facility Scheduling Coordinator or (B) the manner in which Buyer Schedules Facility Energy.

(d) Seller shall be responsible for any costs or charges incurred by Buyer resulting from Seller's failure to comply with this Section 7.5, and any such costs or charges shall not count toward the CAISO Integration Amounts Cost Cap.

**Section 7.6 No Payment.** Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 7.5.

**Section 7.7 Title; Risk of Loss.** As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of all Energy at and from the Point of Delivery. Seller warrants that it will deliver all Energy and all of the associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and all of the associated Products shall pass from Seller to Buyer at the Point of Delivery.

**Section 7.8 RPS and EPS Compliance.**

(a) Seller warrants and guarantees that, from the time it receives notice from the CEC that the Facility is CEC Certified, and at all times thereafter until the expiration or earlier termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant.

(b) Notwithstanding Section 7.8(a), if a Change in Law occurs after the Commercial Operation Date that causes the Facility to cease to be both RPS Compliant and EPS Compliant, Seller shall use commercially reasonable efforts to comply with such Change in Law, which efforts shall include the incurrence of up to Three Hundred Thousand Dollars (\$300,000.00) in any Contract Year, or One Million, Two Hundred Thousand Dollars (\$1,200,000) in the aggregate over the Agreement Term in costs and expenses, including without limitation, registration fees, volumetric expenses, license renewal fees, external consultant fees, and capital costs, but excluding lobbying activities, to cause the Facility to be RPS Compliant and EPS Compliant. If notwithstanding such commercially reasonable efforts, the Facility is not RPS Compliant or EPC Compliant, Buyer shall remain obligated to purchase the Products at the full Contract Price.

(c) From time to time and at any time requested by Buyer's Authorized Representative, Seller will furnish to Buyer, Governmental Authorities, or other Persons designated by Buyer, all certificates and other documentation reasonably requested by Buyer's Authorized Representative in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant and EPS Compliant.

**ARTICLE VIII  
ENVIRONMENTAL ATTRIBUTES**

**Section 8.1 Transfer of Environmental Attributes.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term associated with the Facility Energy and any Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. The consideration for the transfer of Environmental Attributes is contained within the Contract Price.

**Section 8.2 Reporting of Ownership of Environmental Attributes.** During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

**Section 8.3 Environmental Attributes.** Upon request by Buyer's Authorized Representatives, Seller shall take all actions and execute all documents or instruments necessary under applicable law, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

**Section 8.4 Use of Accounting System to Transfer Environmental Attributes.** In furtherance and not in limitation of Section 8.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall register with WREGIS (or any successor system) to evidence the transfer of any Environmental Attributes considered RECs under applicable law or any voluntary program ("*WREGIS Certificates*") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols and WREGIS Operating Rules and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, Seller shall transfer WREGIS Certificates from Seller's WREGIS account to not more than three (3) WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Facility, maintaining its account, acquiring and arranging for a Qualified Reporting Entity ("*QRE*") and any applicable QRE agreements, and transferring WREGIS Certificates to Buyer, Buyer's Authorized Representative, or any other designees. Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer's Authorized Representative or its designees for purposes of any RECs attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, if any, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of RECs under this Agreement by delivering to Buyer an attestation in substantially the form attached as Appendix D for the RECs associated with Facility Energy, or Replacement Energy, if any, measured in whole MWh, or by such other method as Buyer shall designate.

**Section 8.5 Further Assurances.** Pursuant to Section 8.4, if WREGIS (or any successor thereto) is not in operation, or for Environmental Attributes to which WREGIS does not apply, Seller shall document the production of Environmental Attributes other than RECs by delivering with each invoice to Buyer an attestation for the amount of such Environmental Attributes associated with Facility Energy or included with Replacement Energy, if any, for the preceding Month in the form of the attestation set forth as Appendix D. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, each Party shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be

recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

## **ARTICLE IX MAKEUP OF SHORTFALL ENERGY**

**Section 9.1 Makeup of Shortfall.** Within thirty (30) days after the end of each Contract Year for each Facility, Seller shall provide Buyer with a calculation of Facility Energy for such Contract Year. If Seller fails during any Contract Year to deliver Facility Energy in an amount equal to the Guaranteed Generation for the Facility, then Seller shall make up the shortfall of Facility Energy ("*Shortfall Energy*") in accordance with this Article IX.

**Section 9.2 Replacement Energy.** During the Shortfall Makeup Period, the amount of Shortfall Energy shall first be reduced by the amount of any (a) Facility Energy or Deemed Generated Energy from the Facility delivered or deemed to be delivered above the Guaranteed Generation from the Facility during the applicable Shortfall Makeup Period, and (b) Replacement Energy delivered by Seller during the Shortfall Makeup Period, which Replacement Energy shall be delivered to the Point of Delivery or other point of delivery designated by Buyer (which point of delivery shall be deemed the "Point of Delivery" for such Replacement Energy for purposes of Article VII and the other Scheduling and delivery provisions hereof) and on a delivery schedule mutually agreed to by Seller and Buyer's Authorized Representative. To the extent Seller is unable to deliver or provide sufficient Facility Energy, Deemed Generated Energy, or Replacement Energy to make up the remaining Shortfall Energy, then Seller shall, at the end of the Shortfall Makeup Period, pay Buyer liquidated damages in accordance with Section 9.3. Notwithstanding the foregoing, at the end of each RPS Compliance Period during the Delivery Term, if there is any Shortfall Energy at such time, Seller shall pay Buyer liquidated damages in accordance with Section 9.3 for the amount of Shortfall Energy in the last calendar year of such RPS Compliance Period.

**Section 9.3 Shortfall Liquidated Damages.** If Seller is required to pay liquidated damages pursuant to Section 9.2, such liquidated damages shall be equal to an amount for each MWh of remaining Shortfall Energy equal to the positive difference, if any, obtained by subtracting (a) the Contract Price specified in Section 2 of Appendix A from (b) the Replacement Price ("*Shortfall Liquidated Damages*"). If Seller fails to pay Buyer the Shortfall Liquidated Damages prior to the end of the Shortfall Makeup Period, Buyer shall have the right, as early as the last day of such Shortfall Makeup Period, to draw the amount of Shortfall Liquidated Damages owed to Buyer from the Delivery Term Security. The Shortfall Liquidated Damages payable under this Section 9.3 shall be payable in lieu of actual damages and shall be Buyer's sole remedy, and Seller's sole liability, for Seller's failure to achieve the Guaranteed Generation and deliver Replacement Energy in the amount of the Shortfall Energy, except that the foregoing shall not limit Buyer's right to terminate this Agreement under Section 9.5 or exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with or before or after the accrual of such Shortfall Energy. The Parties acknowledge and agree that (1) the damages that Buyer would incur due to shortfalls in Facility Energy would be difficult or impossible to predict with certainty, and (2) it is impractical and difficult to assess actual damages in those circumstances and, therefore, Shortfall Liquidated Damages are a fair and reasonable calculation of such damages.

**Section 9.4 Availability Requirement.** Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable.

**Section 9.5 Shortfall Energy Termination.** If Seller fails during any two consecutive Contract Years to deliver at least sixty-two and one half percent (62.5%) of the Guaranteed Generation then Buyer, in its sole discretion, may within thirty (30) days after the end of such Contract Year, elect to either (a) collect Shortfall Liquidated Damages for the Shortfall Energy pursuant to Section 9.3 and terminate this Agreement with respect to such Facility, *provided* that such termination will be without further liability to either Party; or (b) allow Seller to cure such failure by providing Buyer with Replacement Energy or Shortfall Liquidated Damages as described in Section 9.2 and Section 9.3.

## **ARTICLE X CAPACITY RIGHTS**

**Section 10.1 Capacity Rights.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of Seller's rights, title and interest in and to the Capacity Rights. The consideration for the transfer of Capacity Rights, if any, is contained within the Contract Price. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

**Section 10.2 Representation Regarding Ownership of Capacity Rights.** Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. During the Agreement Term, Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at Buyer's own risk and expense, report to any Person that the Capacity Rights belong to it. Seller makes no representations, warranties or covenants to Buyer, either expressed or implied, regarding the current or future characterization or treatment of the Capacity Rights under any Requirement of Law.

**Section 10.3 Further Assurances.** Seller shall execute and deliver such documents and instruments and take such other action as required by the CAISO and as Buyer's Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

## **ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES**

**Section 11.1 Billing and Payment.** Billing and payment for all Products shall be as set forth in this Article XI.

## **Section 11.2 Calculation of Energy Delivered; Invoices and Payment.**

(a) Not later than the tenth (10th) day of each Month, commencing with the next Month following the Month in which Facility Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount due to Seller for Facility Energy, Capacity Rights and Environmental Attributes. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment or services covered by the invoices, and shall be sent to the address set forth in Appendix J or such other address as Buyer may provide to Seller. Seller shall separately provide in such invoice Seller's computation of any allocation for Replacement Energy delivered by Seller and taken by Buyer under this Agreement during the preceding Month, any Deemed Generated Energy calculated during the preceding Month (including any supporting documentation associated therewith) and any other amounts due to Seller, including amounts due under Section 6.3 or Section 7.3. Seller shall also separately designate in such invoice the generation of Excess Energy, if any. Seller shall also provide Buyer with a summary of the calculations pursuant to Section 6.2, and in the case of Replacement Energy, the amount in MWh actually supplied by Seller pursuant to Section 9.2.

(b) Subject to Section 11.2(c) and Section 11.3, not later than the thirtieth (30th) day after receipt by Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such Monthly invoice.

(c) With respect to Deemed Generated Energy, within thirty (30) days after receipt of an invoice from Buyer, Buyer shall notify Seller if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties pursuant to Buyer's request for additional time to verify the information provided by Seller, Buyer shall notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice may be subject to the provisions of Section 11.3. The failure of Buyer to respond to Seller's calculation of Deemed Generated Energy, if any, within thirty (30) days of receipt of an invoice shall be deemed approval of such calculation by Buyer.

(d) Seller shall, in subsequent invoices, adjust previously invoiced amounts to reflect (i) adjustments pursuant to Section 11.3, or (ii) adjustments, reconciliations or final settlements with WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (which shall be without interest of any kind), *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than one (1) year after the billing period.

(e) Within a reasonable period of time following Buyer's receipt of any Settlement Statement from CAISO that includes any amount for which Seller is responsible hereunder, including any amounts due and owing by Seller to Buyer under Section 7.3, Buyer

shall deliver such Settlement Statement to Seller, and Seller shall include a credit for the applicable amount in the next invoice delivered by Seller hereunder; *provided*, that if no further invoices are required to be delivered by Seller hereunder, Seller shall pay the applicable amount to Buyer within thirty (30) days after Buyer's delivery of the Settlement Statement. If Seller disputes any amount included in a Settlement Statement or Seller's responsibility therefor, Seller shall promptly notify Buyer of the basis of the Dispute, and the Parties shall resolve the Dispute in accordance with Section 11.3. Any amount determined to have been Seller's responsibility under Section 11.3 shall be paid by Seller with interest in accordance with Section 11.3.

**Section 11.3 Disputed Invoices.** If any portion of any invoice is in dispute, the undisputed amount, as applicable, shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. If necessary, Disputes may be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "**Interest Rate**" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

**Section 11.4 Buyer's Right of Setoff.** In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from Buyer under this Agreement or otherwise any amount due Buyer from Seller under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.3 if and to the extent paid in the first instance by Buyer.

**Section 11.5 Records and Audits.** Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this

provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, the expiration or termination date of this Agreement, or final settlement of all disputes, claims, or litigation, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at Seller's principal business office or any other of Seller's offices as mutually agreed upon by Buyer and Seller, at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and required to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. If an Authorized Auditor's examination or audit reveals that Buyer's overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit, which examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 11.5 by inserting this Section 11.5 into each Subcontract.

#### **Section 11.6 Electric Metering Devices.**

(a) Facility Energy shall be measured using a CAISO-approved revenue-quality Electric Metering Device that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised Monthly invoices, pursuant to this Article XI covering the entire applicable time period in order to conform fully such adjustments to the meter data.

Seller shall submit any revised invoices no later than thirty (30) days after the date on which the CAISO provides Seller with binding adjustments to the meter data.

(b) Seller or its Authorized Representative, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections and tests. Upon request by Buyer, Seller or its Authorized Representative shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus one percent (+/- 1.0%), an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer (such approval not to be unreasonably withheld). If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the applicable Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

**Section 11.7 Taxes.** Seller shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery. If Seller is required by a Requirement of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

**ARTICLE XII**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 12.1 Representations, Warranties and Covenants of Buyer.** Buyer makes the following representations, warranties and covenants to Seller as of the Effective Date and continuing through the Agreement Term:

(a) Buyer is a validly existing California joint powers authority and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby and thereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement (i) has been duly authorized by all necessary action, and does not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained; and (ii) does not and will not violate any federal, state, and local law, including but not limited to the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) Buyer is not in violation of any federal, state, and local law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Buyer, or the ability of Buyer to perform any of its obligations under this Agreement.

**Section 12.2 Representations and Warranties of Seller.** Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Each of the Seller Parties is a corporation or limited liability company duly organized and validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and to enter into this Agreement and the Ancillary Documents to which it is a party, and to carry out the transactions contemplated hereby and thereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and any Ancillary Documents to which it is a party.

(b) Each Seller Party has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller Party, and such Seller Party has delivered to Buyer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of

such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party;

(c) The execution, delivery and performance by each Seller Party of this Agreement and any Ancillary Documents to which it is a party have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) The execution and delivery of this Agreement and all Ancillary Documents to which any Seller Party is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and any Ancillary Documents to which any Seller Party is a party, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or shall use commercially reasonable efforts to timely obtain (and expects to obtain in due course) all Permits required for the performance of its obligations hereunder and operation of the Facility in accordance with the Requirements.

(e) This Agreement and any Ancillary Documents to which any Seller Party is a party constitute the legal, valid and binding obligation of such Seller Party enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(f) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any Ancillary Documents to which it is a party.

(g) None of the Seller Parties is in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Ancillary Documents to which it is a party.

(h) Seller is a Special Project Entity.

(i) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document to which they are a party with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for its obligations under this Agreement and any Ancillary Document to which they are a party. No petition in bankruptcy has been filed against any Seller Party, and no Seller Party nor any of their respective

constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) [Reserved].

(k) The Permits (including the CEQA Determinations) required to construct, maintain or operate the Facility in accordance with the Requirements have been or are reasonably expected to be timely obtained in the ordinary course of business.

(l) Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon each Seller Party and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller knows of no proposed Tax assessment against it that is not being actively contested by it in good faith and by appropriate proceeding.

(m) Seller owns or possesses or will acquire all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement, and Seller's use thereof does not infringe on the intellectual property rights of third parties.

(n) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Products except as provided herein.

(o) Seller reasonably expects to obtain the CEQA Determinations in the ordinary course of business in accordance with Appendix I and is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith.

(p) Seller has delivered to Buyer a true, correct, and complete copy of the Generator Interconnection Agreement.

**Section 12.3 Covenants of Seller Related to Special Project Entity Status.** Seller shall remain at all times throughout the Agreement Term a Special Project Entity.

**Section 12.4 Covenants of Seller Related to Site Control Documents.**

(a) Seller shall (i) obtain Buyer's approval prior to execution and delivery by Seller of any Primary Site Control Documents, and (ii) provide to Buyer copies of all Site Control Documents; *provided* Buyer's approval of Primary Site Control Documents shall not be unreasonably withheld, conditioned, or delayed and shall be limited to ensuring that the Primary Site Control Documents (A) are sufficient to establish Site Control with respect to the subject matter thereof, (B) meet the requirements set forth in this Section 12.4, and (C) with respect to the Shared Facilities Agreement, do not allocate a disproportionate obligation or risk to Seller when compared to the pro rata obligations of the other parties; *provided further* that Seller may redact the purchase price, rent or other financial consideration payable under any of the Site Control Documents.

(b) Seller shall (i) cause the execution (if applicable), delivery, and performance by Seller of the Site Control Documents to be duly authorized by all necessary action by Seller and to constitute the legal, valid, and binding obligation of Seller, (ii) maintain Site Control at all times after the Site Control Milestone Date, and (iii) provide Buyer with prompt notice of any change in the status of Seller's Site Control.

(c) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Site Control Documents, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair the rights of Seller under the Site Control Documents, or could be grounds for any Lessor to terminate a Site Control Document.

(d) Seller shall use commercially reasonable efforts to enforce the provisions of the Site Control Documents short of termination thereof such that Seller may enjoy all of the rights granted to Seller thereunder.

(e) Seller shall give Buyer immediate notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under any of the Site Control Documents, or of the receipt by Seller of any notice from any Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Site Control Document. Buyer or Buyer's Authorized Representative, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under a Site Control Document. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(f) After Seller's execution and delivery of a Site Control Document, Seller shall not terminate, cancel, sever or surrender, or permit or suffer the subordination, termination, cancellation, severance or surrender of, or modify, change, amend or assign the Site Control Document in a way that could, individually or in the aggregate, have a material adverse effect on Buyer, the Facility, or Seller's performance of its obligations under this Agreement, without the prior written consent of Buyer's Authorized Representative.

(g) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller, and Seller or any trustee of Seller shall decide to reject or disaffirm the Site Control Documents pursuant to the Bankruptcy Code (or allow same), Seller shall give Buyer at least ten (10) days' prior notice of the date on which application shall be made to the court for authority to reject or disaffirm such Site Control Documents or such Site Control Documents shall be otherwise rejected. Buyer shall have the right, but not the obligation, to serve upon Seller or such trustee within such ten (10) day period a notice stating that (i) Buyer demands that Seller (whether as debtor in possession or otherwise) or such trustee assume and assign such Site Control Documents to Buyer pursuant to the Bankruptcy Code, and (ii) Buyer shall covenant to cure, or to provide adequate assurance of prompt cure of, all defaults (except defaults of the type

specified in Section 365(b)(2) of the Bankruptcy Code) and to provide adequate assurance of future performance under such Site Control Documents. In the event that Buyer serves any such notice as provided above, neither Seller (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm the Site Control Documents and Seller (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within thirty (30) days after such notice shall have been given, subject to Buyer's performance of such covenant.

(h) Seller shall cause each Primary Site Control Document to include provisions providing (i) that Buyer is a third party beneficiary of the representations, warranties, and covenants of the counterparties to the Primary Site Control Documents, and that Buyer has all of the rights and benefits of Seller under, and the ability to enforce, the Primary Site Control Documents, (ii) a right for Buyer to step in and cure any breach or default by Seller under the Primary Site Control Documents prior to termination thereof, and (iii) an obligation of the counterparties to the Primary Site Control Documents to deliver to Buyer upon Buyer's request an estoppel certificate certifying (A) whether the applicable Primary Site Control Document has been supplemented, amended, assigned, or subleased, and if so, the substance and manner thereof, (B) the validity and force and effect of the applicable Primary Site Control Document, (C) the existence of any default thereunder, (D) the commencement and expiration dates of the applicable Primary Site Control Document, (E) the rights of Buyer under the Applicable Primary Site Control Document, and (F) any other matters as may be reasonably requested by Buyer. Upon any payment by Buyer to cure any default of Seller under a Primary Site Control Document that prevents termination of such Primary Site Control Document or the exercise of any other remedy of the Lessor thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall reimburse the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such reimbursement by Seller.

(i) For each Site Control Document capable of being recorded, Seller shall cause either a memorandum of such Site Control Document or the Site Control Document itself to be recorded in the applicable county for such Site Control Document promptly upon execution and delivery thereof.

**Section 12.5 Covenants of Seller Related to Material Adverse Effects.** In the event of a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller or an event of default by Seller or the operator under the O&M Agreement, Seller shall promptly thereafter notify Buyer, and Seller shall, within thirty (30) days after providing such notice, provide to Buyer a plan or report, including a report (at Seller's sole cost and expense) of a Licensed Professional Engineer with respect to an operational problem related to the Facility if reasonably requested by Buyer, that will demonstrate in detail or explanation reasonably acceptable to Buyer that the material adverse effect or Default has been mitigated or cured, or will be mitigated or cured within a reasonable period or within the cure periods provided therefor (and listing, in detail, the actions that Seller has taken, is taking, or proposes to take with respect to such condition or event), or that such material adverse effect or Default will not have a material adverse effect on the performance of Seller under this Agreement. A failure to provide such plan or report within thirty (30) days, or to diligently undertake any of the

obligations set forth under such plan or report, will be deemed a failure by Seller to perform an obligation under Section 13.1(b).

**Section 12.6 Covenants of Seller to Provide Quarterly Attestations.** Seller shall provide to Buyer on January 1, April 1, July 1 and October 1 of each Contract Year, a statement that the representations and warranties set forth in Sections 12.2(a), 12.2(b), 12.2(c), 12.2(d), 12.2(e), 12.2(f), 12.2(g), 12.2(h), 12.2(l), 12.2(m), and 12.2(n) in this Agreement remain true and correct as of the date of such statement and that there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default; *provided*, that with respect to any attestation with respect to the representation and warranty set forth in Section 12.2(f), Seller may include a disclosure schedule with any such attestation in order to make such representation true and correct.

### **ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE**

**Section 13.1 Default.** Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate);

(b) **Performance Default.** Failure by a Party to perform any of its material duties or obligations under this Agreement (other than any failure for which a sole remedy is provided in this Agreement and any failure which is separately listed as a Default of Seller under this Section 13.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure cannot be cured within such thirty (30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to ninety (90) days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification, or other statement made by a Party in this Agreement or any Ancillary Document is materially false or inaccurate at the time made and, such default is not remedied within thirty (30) days after receipt of notice thereof from the other Party.

(d) **Bankruptcy.** Bankruptcy of either Buyer or Seller.

(e) **Performance Security Failure.** The failure of Seller to maintain or replace the Performance Security in compliance with Section 5.7.

(f) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix F that is not cured within five (5) Business Days after receipt of notice of such failure from Buyer.

(g) **Fundamental Change.** Subject to Section 14.7, Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the “*Successor Entity*”) fails to assume all the obligations of Seller under this Agreement or any Ancillary Document to which it is a party by operation of law or pursuant to an agreement satisfactory to Buyer.

(h) **Site Control Document Default.** Seller breaches any of its obligations under Section 12.4, and such breach is not cured within ten (10) days after receipt of notice thereof from Buyer, except that such cure period shall not apply to a breach of Seller’s obligations under Section 12.4(f).

### **Section 13.2 Default Remedy.**

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 13.2(a) shall affect Seller’s rights and remedies set forth in this Section 13.2. Seller’s continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 14.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including termination of this Agreement pursuant to Section 13.4. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, and (ii) termination of this Agreement pursuant to Section 13.4. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

**Section 13.3 Cure Rights of Facility Lender.** In connection with any financing or refinancing of the Facility, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement that is commercially reasonable and customary in the

industry for limited or non-recourse project financing transactions and in form and substance reasonably satisfactory to Buyer's Authorized Representative, which consent shall include, among other things, provisions permitting reasonable extensions of the cure periods for Defaults hereunder to permit the Facility Lender to cure any Default prior to Buyer's termination of this Agreement (such consent, the "**Facility Lender Consent**"). The Facility Lender Consent shall provide the Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and the opportunity to cure any such default.

#### **Section 13.4 Termination for Default.**

(a) If a Default occurs, the Party that is not the Defaulting Party (the "**Non-Defaulting Party**") may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice by it ("**Termination Notice**") to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("**Early Termination Date**") on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Section 13.1(d), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Products that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in Energy contracts and bona fide third party offers.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all other components of the Products. The "**Assumed Daily Deliveries**" is an amount equal to the greater of (A) the quotient of the Guaranteed Generation divided by 365, and (B) the average daily amount of Facility Energy during the Delivery Term, if any.

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable

detail the calculation of such amount. The Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to the dispute resolution process provided in Section 14.3. Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

(i) “**Gains**” means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) “**Losses**” means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) “**Costs**” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred or in entering into new arrangements which replace this Agreement, excluding attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party’s Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section 13.4, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.4(a)(ii) above).

#### **ARTICLE XIV MISCELLANEOUS**

**Section 14.1 Authorized Representative.** Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an “**Authorized Representative**”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each

Party shall notify the other Party of the identity of its Authorized Representative, and alternates if designated, and such Party shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement.

**Section 14.2 Notices.** With the exception of billing invoices pursuant to Section 11.2(a) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix J, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of registered or certified mail. In addition to the foregoing, Seller and Buyer's Authorized Representatives may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

### **Section 14.3 Dispute Resolution.**

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 14.3) (a "*Dispute*"), either Party (the "*Notifying Party*") may deliver to the other Party (the "*Recipient Party*") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "*Dispute Notice*"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 14.3(a) and (b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 and Section 14.3 of this Agreement.

(d) In addition to the Dispute Resolution process set forth in this Section, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

**Section 14.4 Further Assurances; Change in Electric Market Design.**

(a) Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that the other Party enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, the Parties shall engage in such negotiations in good faith. If the Parties are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Section 14.3. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered or constitute, or form the basis of a Force Majeure.

**Section 14.5 No Dedication of Facilities.** Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

**Section 14.6 Force Majeure.**

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party promptly after becoming aware thereof (and in any event within fourteen (14) days after becoming aware of the claimed Force Majeure event) (the "***Force Majeure Notice***"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy due to a Force Majeure, then Buyer shall have no obligation to pay Seller for Facility Energy not delivered or received by reason thereof. The foregoing provisions shall not excuse any obligation of Seller with respect to Shortfall Energy (and Replacement Energy, as applicable) arising prior to the occurrence of any Force Majeure event. In no event shall either Party be obligated to compensate the other Party or any other Person for any losses, expenses or liabilities sustained as a consequence of any Force Majeure.

(b) The term “*Force Majeure*” means any act of God (including fire, flood, earthquake, storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout, act of the public enemy, war (declared or undeclared), insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “*Unexcused Cause*”): (1) any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Facility Energy at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service; (7) failure of third parties to provide goods or services essential to a Party’s performance; (8) Facility or equipment failure of any kind; or (9) any changes in the financial condition of Buyer, Seller, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement.

(c) Buyer may terminate this Agreement with respect to the affected Facility if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event.

(d) Any termination of this Agreement under Section 14.6(c) shall be “no-fault” and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, Seller shall pay Buyer for any and all amounts hereunder that may be owing with respect to the terminated Facility, including for any existing Shortfall Energy or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Performance Security for the terminated Facility (less any amounts drawn by Buyer in accordance with this Agreement). The exercise by Buyer of its right to terminate the Agreement shall not render Buyer liable for any losses or damages incurred by Seller whatsoever.

#### **Section 14.7 Assignment of Agreement.**

(a) Except as set forth in this Section 14.7, (i) neither Party may assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld, and (ii) Seller may not permit the assignment of any of the membership interests in Seller to a third party without the prior written consent of Buyer; *provided*, that the consent of Buyer shall not be required with respect to any assignment, sale or transfer by Seller or its Affiliates of the membership interests in Seller to a Qualified Transferee.

(b) Buyer may assign this Agreement without the consent of Seller to a Qualified Buyer Assignee; *provided*, that in connection with any such assignment any such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement; *provided further* that any modifications or amendments to this Agreement to accommodate the technical requirements of such Qualified Buyer Assignee (including as they relate to transmission and scheduling) shall require the consent of Seller, which shall not be unreasonably withheld.

(c) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Section 14.7, without the prior written consent of Buyer and otherwise subject to compliance with the Right of First Offer set forth in Section 14.25. Any purported sale or transfer in violation of this Section 14.7(c) shall be null and void and of no force or effect.

(d) Buyer's or Buyer's Authorized Representative's consent shall not be required in connection with (i) the collateral assignment of this Agreement to any Facility Lender or (ii) any assignment of all or a portion of the membership interests in Seller to any Facility Lender, in each case for the purpose of financing the Facility; *provided, however*, that (1) the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement, and (2) in connection with any such assignment and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement the Facility be operated and maintained by a Qualified Operator. Seller shall provide Buyer with ninety (90) days' prior notice of any such collateral assignment or assignment of membership interests. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Products (not including the proceeds thereof) to any Facility Lender. To facilitate Seller's obtaining of financing for the Facility, Buyer agrees to provide the Facility Lender Consent. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of the Facility Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(d).

(e) In no event shall Buyer be liable to Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu

of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer or Buyer's Authorized Representative, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by Facility Lender shall be made only to an entity that is a Qualified Transferee..

**Section 14.8 Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

**Section 14.9 Attorney Fees & Costs.** Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

**Section 14.10 Voluntary Execution.** Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

**Section 14.11 Entire Agreement; Amendments.** This Agreement (including all Appendices) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

**Section 14.12 Governing Law.** This Agreement was made and entered into in the City of Los Angeles, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

**Section 14.13 Venue.** All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

**Section 14.14 Execution in Counterparts.** This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

**Section 14.15 Effect of Section Headings.** Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

**Section 14.16 Waiver; Available Remedies.** The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise as a court of competent jurisdiction may deem just and proper to enforce this Agreement or to prevent any violation hereof. The rights granted herein are cumulative.

**Section 14.17 Relationship of the Parties.** This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

**Section 14.18 Third Party Beneficiaries.** The Participating Members are third party beneficiaries of the representations, warranties, and covenants of Seller in this Agreement and have all of the rights and benefits of Buyer under, and the ability to enforce, this Agreement. Except as set forth in the foregoing sentence, (a) the provisions of this Agreement are solely for the benefit of the Parties, (b) nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein, and (c) this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person that is not a party hereto.

**Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.**

(a) Seller undertakes and agrees to indemnify and hold harmless Buyer, the Participating Members, and all of their respective commissioners, officers, agents, employees, advisors, Authorized Representatives, and assigns and successors in interest (collectively, “*Indemnitees*”) and, at the option of Buyer, to defend such Indemnitees from and against any

and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller's employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, any failure of any representation, warranty or guarantee to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee.

(b) Subject to Section 14.6, in the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by Buyer. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, or any portion thereof. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Facility, or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(d) Except to the extent included in the liquidated damages, indemnification obligations related to third party claims or other specific charges expressly provided for herein, in no event shall either Party or, in the case of Buyer, any Indemnitees, be liable for special, incidental, exemplary, indirect, punitive or consequential damages, lost profits or other costs, business interruption damages related to or arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under statute, contract, tort (including such Party's own negligence) or any other theory of liability at law or in equity. If no remedy or measure of damages is expressly provided herein, the obligor's liability shall be limited to direct damages only. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes of such damages, including the negligence of any Party, whether such negligence be sole, joint, contributory, concurrent, or active or passive. The Parties hereby waive any right to contest such payments as an unreasonable penalty.

**Section 14.20 Severability.** In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held

invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

**Section 14.21 Confidentiality.**

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data (including operating data provided in connection with the scheduling of energy pursuant to Article VII or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("*Confidential Information*"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil

investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("**Brown Act**"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act; *provided* that Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 14.21(c), (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" or "engineering plans" and (iii) support Seller in its efforts to obtain a protective order or other appropriate remedy with respect to the disclosure of operating data from the Facility or any engineering drawings, project plans, technical specifications or other similar information regarding the Facility.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to

estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity.

**Section 14.22 Mobile-Sierra.** Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall 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*, 554 U.S. 527 (2008).

**Section 14.23 Taxpayer Identification Number (TIN).** Seller declares that its authorized TIN is 27-0176702. No payment will be made under this Agreement without a valid TIN.

**Section 14.24 Service Contract.** The Parties intend that this Agreement will qualify as a “service contract” as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

**Section 14.25 Right of First Offer.**

(a) Buyer has a “*Right of First Offer*” (or “*ROFO*”) for any proposed sale of the Facility and related assets (the “*Facility Assets*”) by Seller, all in accordance with the provisions of this Section 14.25.

(b) Prior to Seller commencing the negotiation of a sale of the Facility Assets, Seller shall provide notice to Buyer of Seller’s intention to sell the Facility Assets (a “*Proposed Sale Notice*”). Upon receipt of such Proposed Sale Notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility Assets from Seller (a “*Proposed Purchase Notice*”).

(c) If (i) Buyer does not provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Facility Assets from Seller following a Proposed Sale Notice, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the sixty (60) day period set forth in Section 14.25(d), then Seller shall be free to negotiate the sale of the Facility Assets to any third party; *provided*, that that if a sale is not consummated within eighteen (18) months following the

date of the Proposed Sale Notice, then Seller must provide another Proposed Sale Notice hereunder (and go through the ROFO process hereunder) before consummating any such sale.

(d) If Buyer does provide a notice in response to Seller's Proposed Sale Notice indicating that Buyer is interested in purchasing the Facility, then the Parties shall undertake for a period up to sixty (60) days from the date of Buyer's response notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility Assets to Buyer. Failing such mutual agreement, then, subject to the requirements of Section 14.7(c), Seller shall be free to sell the Facility to any third party, *provided* that if a sale is not consummated within eighteen (18) months following the date of the expiration of such sixty (60) day period, Seller must provide another Proposed Sale Notice hereunder (and go through the ROFO process hereunder) before consummating any such sale, and *provided further* that any such sale shall not be for an aggregate purchase price less than the aggregate purchase price last offered by Seller to Buyer in writing during such sixty (60) day negotiation period.

(e) The ROFO shall not apply to any sale-leaseback or similar Facility financing by Seller or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under financing security documents.

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Each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

**SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY**

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

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

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

Attest: \_\_\_\_\_

**RE COLUMBIA TWO LLC**

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

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

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

**APPENDIX A  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**CONTRACT PRICE**

1. Test Energy. The Contract Price for Products associated with Test Energy is equal to 75% of the Contract Price set forth in Section 2 of this Appendix A.
2. Facility Energy. The Contract Price for the Products associated with all Facility Energy other than Excess Energy is \$69.98 per MWh.
3. Excess Energy. The Contract Price for Products associated with Excess Energy is equal to 75% of the Contract Price set forth in Section 2 of this Appendix A.

**APPENDIX B-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

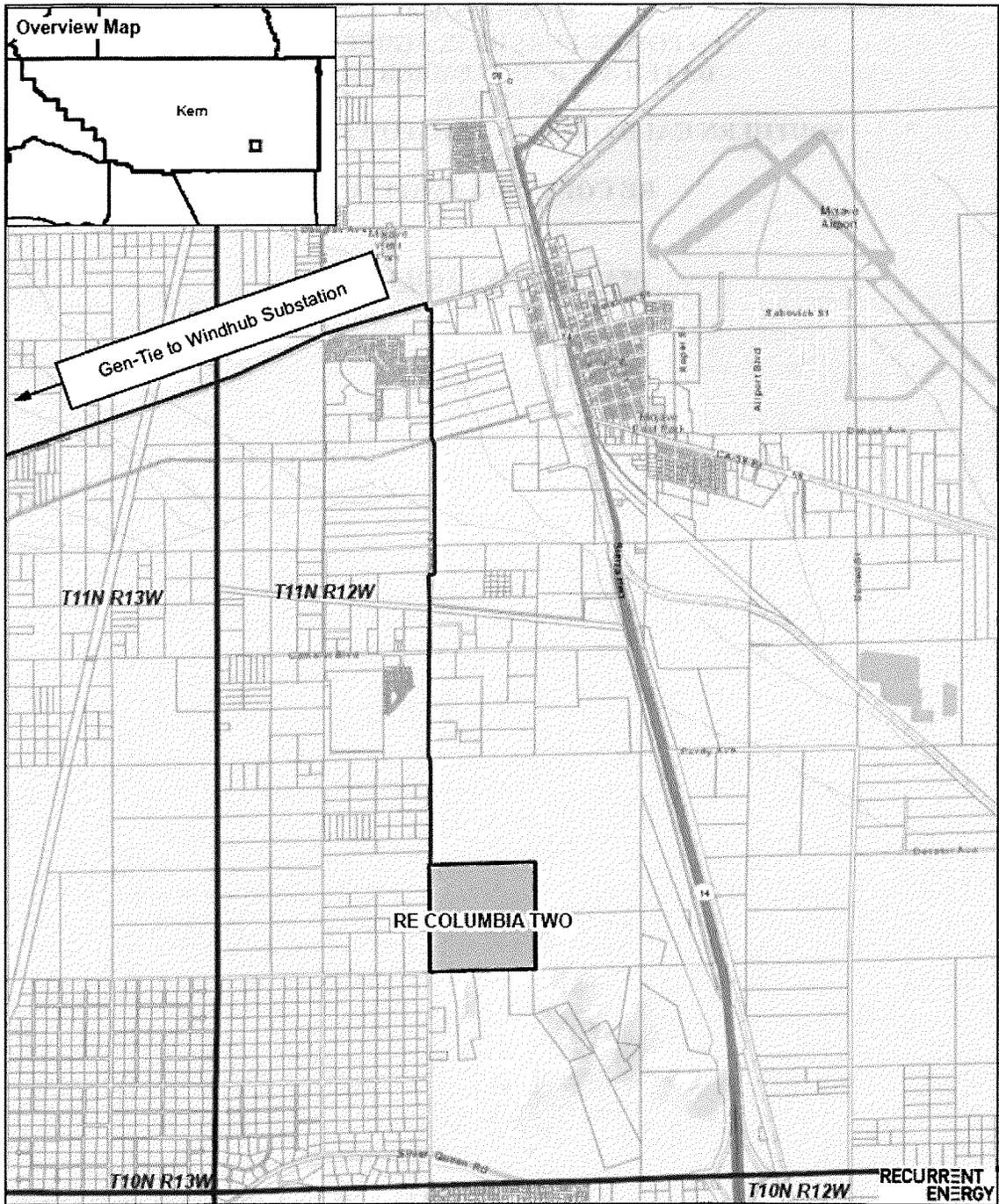
**FACILITY, PERMITS AND OPERATOR**

1. Name of Facility: RE Columbia Two
2. Owner: RE Columbia Two LLC
3. Operator: To be designated after Effective Date
4. Type of Facility: Solar
5. Facility Capacity: 15 MW
6. Equipment: Solar Photovoltaic
7. Expected Commercial Operation Date: 12/31/2014
8. Site: Physical address: NW of Intersection of Holt Street and Sunset Avenue  
Mojave, CA 93501
9. Location, design and configuration of Facility: *See map attached on page Appendix B-2.*
10. Permits
  - a. Development and Construction:
    - i. Conditional Use Permit – Kern County
    - ii. Grading/Building Permit – Kern County
  - b. Operation and Maintenance:
    - i. Conditional Use Permit – Kern County

**APPENDIX B-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

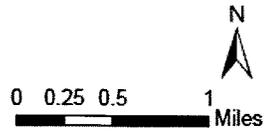
**MAP OF THE FACILITY**

[Attached.]



- Legend**
-  RE Columbia Two
  -  Proposed Gen-Tie
  -  County Parcel Boundaries
  -  Township/Range Line

**Location of RE Columbia Two  
Kern County, CA**



**APPENDIX C**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF SEPTEMBER 19, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**RE COLUMBIA TWO LLC**

**ANNUAL CONTRACT QUANTITY**

<b>Contract Year</b>	<b>Annual Contract Quantity, MWh</b>
1	45,237
2	45,011
3	44,786
4	44,562
5	44,339
6	44,118
7	43,897
8	43,677
9	43,459
10	43,242
11	43,026
12	42,810
13	42,596
14	42,383
15	42,172
16	41,961
17	41,751
18	41,542
19	41,334
20	41,128

**APPENDIX D  
 TO POWER PURCHASE AGREEMENT,  
 DATED AS OF SEPTEMBER 19, 2013  
 BETWEEN  
 SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
 AND  
 RE COLUMBIA TWO LLC  
FORM OF ATTESTATION**

\_\_\_\_\_ (Seller) **Environmental Attribute Attestation and Bill of Sale**

\_\_\_\_\_ (“Seller”) hereby sells, transfers and delivers to Southern California Public Power Authority (“Buyer”) the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type: \_\_\_\_\_ Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_  
 As applicable: CEC Reg. no. \_\_\_\_\_ Energy Admin. ID no. \_\_\_\_\_ Q.F. ID no. \_\_\_\_\_

<u>Dates</u>	<u>MWhs generated</u>
_____ 20____	_____
_____ 20____	_____
_____ 20____	_____

in the amount of one Environmental Attribute or its equivalent for each MWh generated.

Seller further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person/telephone: \_\_\_\_\_

**APPENDIX E-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC  
FORM OF LETTER OF CREDIT**

**IRREVOCABLE AND UNCONDITIONAL  
STANDBY LETTER OF CREDIT NO. \_\_\_\_\_**

Applicant:

[\_\_\_\_\_]

Beneficiary:

Southern California Public Power Authority  
1160 Nicole Court  
Glendale, CA 91740

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Standby Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment upon presentation to us at our office at **[bank's address]**,<sup>1</sup> of: (i) your written demand for payment containing the text of Exhibit I, (ii) your signed statement containing the text of Exhibit II and, (iii) the original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings) (the "Documents"). Drawings may be presented via fax to \_\_\_\_\_. The original Letter of Credit and documents are to be sent via overnight courier to our address indicated above.

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

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<sup>1</sup> Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

Upon presentation to us of your Documents in conformity with the foregoing, we will, on the third (3rd) succeeding Business Day after such presentation, , irrevocably and without reserve or condition except as otherwise stated herein, make payment hereunder in the amount set forth in the demand. Payment shall be made to your order in the account at the bank designated by you in the demand in immediately available funds. We agree that if, on the Expiration Date, the office specified above is not open for business by virtue of an interruption of the nature described in the Uniform Customs Article 36, this Letter of Credit will be duly honored if the specified Documents are presented by you within thirty (30) days after such office is reopened for business.

Provided that the presentation on this Letter of Credit is made on or prior to the Expiration Date and the applicable Documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely a written order issued by a court, which order specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. -

We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related Documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and Document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

This Letter of Credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Exhibit IV hereto signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the next Business Day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the Expiration Date, or any future expiration date, unless at least thirty (30) calendar days prior to the Expiration Date (or any future expiration date), we send you notice by registered mail, return receipt requested or overnight courier at your address herein stated or such other address of which you notify us in advance in writing that we elect not to consider this Letter of Credit extended for any such additional period.

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit , and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form of Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification and copy of document proving such successorship:

“The undersigned does hereby certify that [drawer] is the successor by operation of law to the Southern California Public Power Authority, a beneficiary named in [name of bank] Letter of Credit No. \_\_\_\_\_.”

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the “Uniform Customs and Practices for Documentary Credits,” (2007 Revision) of the International Chamber of Commerce Publication No. 600 (the “Uniform Customs”). As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of [\_\_\_\_\_] in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

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, except for Exhibit I, II, III and IV 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 otherwise provided in this paragraph.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the address referred to above, and shall specifically refer to this Letter of Credit no. \_\_\_\_\_.

Yours faithfully,

(name of issuing bank)

By \_\_\_\_\_  
Title \_\_\_\_\_

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$\_\_\_\_\_ by deposit to our account no. \_\_\_\_\_ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit no. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ in the amount of \$\_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_ as the Applicant.

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT II  
STATEMENT

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit no. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ in the amount of \$ \_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_, as the Applicant.

We hereby certify to you that \$ \_\_\_\_\_ is due, owing and unpaid to us by the Applicant in that certain [DESCRIBE AGREEMENT].

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT III  
AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

Beneficiary:

Applicant:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (strike two) the stated amount by \$ \_\_\_\_\_ to a new stated amount of \$ \_\_\_\_\_ or by extending the Expiration Date to \_\_\_\_\_ from \_\_\_\_\_. All other terms and conditions of the Letter of Credit remain unchanged.

An amendment is effective only when accepted by the Southern California Public Power Authority, below.

Dated: \_\_\_\_\_

Yours faithfully,

(name of issuing bank)

By \_\_\_\_\_  
Title \_\_\_\_\_

ACCEPTED

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

EXHIBIT IV  
SURRENDER

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

Notice of Surrender of Letter of Credit

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

Attention: Letter of Credit Department

Ladies and Gentlemen:

We refer to your above-mentioned Irrevocable and Unconditional Standby Letter of Credit (the "Letter of Credit"). The undersigned, an authorized signer of the Southern California Public Power Authority, hereby surrenders this Letter of Credit to you for cancellation as of the date set forth above. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

**APPENDIX E-2**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF SEPTEMBER 19, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**RE COLUMBIA TWO LLC**  
  
**QUALIFIED ISSUERS LIST**

1. Mizuho Bank
2. BTMU (Bank of Tokyo-Mitsubishi UFJ)
3. Helaba
4. Santander
5. Lloyds TSB Bank plc
6. Credit Agricole
7. Union Bank, N.A.
8. Prudential Financial Inc.

**APPENDIX F  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**INSURANCE**

**I. GENERAL REQUIREMENTS**

As a condition to the Effective Date, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to the risk management section of the project manager for Buyer or acceptable to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Executive Director, Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

## **II. SPECIFIC COVERAGES REQUIRED**

### **A. Commercial Automobile Liability**

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned (if applicable), non-owned, and hired vehicles for performance of the work by Seller or its officers, agents, or employees, as required, to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its members, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement by Seller or its officers, agents, or employees. The evidence of insurance shall be a form acceptable to Buyer's risk management agent.

### **B. Commercial General Liability**

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire, Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be a form acceptable to Buyer's risk management agent, and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations of Seller and its officers, agents, or employees under this Agreement.
2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. A description of the coverages included under the policy.

### **C. Excess Liability**

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies on an endorsement to the policy

acceptable to Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

**D. Workers' Compensation/Employer's Liability Insurance**

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be a form of Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

**APPENDIX G  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**QUALITY ASSURANCE PROGRAM**

Seller shall implement a Quality Assurance (“Q/A”) Program to ensure that the performance of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that the Facility will comply with the Requirements and the manufacturers’ or suppliers’ requirements for successful operation of the Facility.

**Quality at Seller**

Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than “low” quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

“Quality assurance” refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term “quality control” to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller’s Q/A Program. In addition, quality maintenance which meets or exceeds manufacturers’ or suppliers’ requirements and best industry practices must be an integral part of Seller’s Q/A Program.

**The Quality Management Process**

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term “quality” most accurately refers to a project’s ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller’s project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller’s project management team targets the following areas to monitor quality:

- 1) A written Q/A Manual.
- 2) Independent engineering review of the entire project process, from design review through Commercial Operation.
- 3) A written maintenance manual for the Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

### **Q/A Manual**

The idea of a Q/A manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and lastly the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. Furthermore, it shall provide the plan and strategy for quality control and review during the construction period. The Q/A Manual shall strive, at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties as necessary.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the construction of the Facility.

- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

### **Conceptual Design Review**

Seller has a team of professionals who develop and review conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed in order to assess the solar resource, project constructability, site access, cultural and biological impact, land use restrictions, and landowner requirements. At this stage, the site plan is reviewed, modified as necessary, and used to begin the permitting and public review process. The site plan may be further modified based on comments received during the permitting and public review process. Subsequent to this phase, final third party engineering will commence.

### **Final Engineering Design**

Third party engineering firms, licensed to practice in the state in which the project is to be constructed, will commence the detailed design necessary for the permitting and construction of the Facility. Each firm will have its own quality assurance and quality control procedures, however, Seller and a third party independent engineer will review the final work products to ensure conformance with this Agreement. When Seller and third party independent engineer have completed a multiple phase review process, and all comments have been addressed, the design is considered final and ready for construction permitting.

During the final engineering design process, geotechnical studies will be finalized as needed. If existing subsurface conditions are different from anticipated, the design may be modified to account for any variances. Any changes of this nature will be documented in as-built design drawings and approved in advance by Seller.

### **Quality Assurance at the Construction Site**

Seller will hire a third party general contractor to construct the project. The contractor will be required to have a quality assurance program implemented by its own staff, and utilizing third party inspectors as necessary. The primary areas of focus are assuring conformance of construction to design drawings, conformance of materials to specifications, and to ensure prudent industry standards and best practices are being utilized. The contractor will be required to provide third party inspection and testing as necessary. The contractor will also be required to maintain a set of drawings during the course of construction, which will be used to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller's construction management team prior to implementation.

The contractor will provide the required oversight and training of its installation crew to ensure the construction of the facility meets their quality guidelines. As necessary, equipment suppliers will have technical advisors on site to inspect, advise, and sign off on installation means and methods. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents and Q/A procedures. The contractor and appropriate equipment suppliers will commission the generating facility per prudent industry standards, equipment specifications, and utility requirements. Prior to construction completion, a punchlist will be developed by the contractor, Seller, Seller's representatives, and third party independent engineer. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of all punchlist items. Lastly, the independent engineer will perform periodic audits during construction to oversee critical items, confirm construction progress, and provide independent reporting and assessments to the project stakeholders.

Following completion of the project, the contractor will be required to provide to Seller as-built design drawings, record of all testing documentation, and final permit approvals. This documentation will be maintained at the project site during operations of the Facility.

#### **Quality Assurance During Commercial Operations**

Seller shall supply a Quality Assurance Plan for Buyer's review and approval no less than sixty (60) days prior to the anticipated Commercial Operation Date. Upon receipt of Quality Assurance Plan, Buyer shall provide written approval, such approval not to be unreasonably withheld, or comment within ten (10) Business Days.

**APPENDIX H  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC  
  
QUALIFIED OPERATORS**

- Signal Energy, LLC
- First Solar Electric (California) Inc.
- NRG Energy, Inc.
- SunPower Corporation
- Zachry Holdings, Inc.

**APPENDIX I  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC  
MILESTONE SCHEDULE**

<b>No.</b>	<b><u>Guaranteed Date</u></b>	<b><u>Milestone Description</u></b>	<b><u>Daily Liquidated Damages/Other Remedy</u></b>
1.	Ten (10) days after the Effective Date	Seller has delivered all certificates and other documents required to establish that the Insurance is in full force and effect	
2.	Ten (10) days after the Effective Date	Seller has delivered to Buyer a CEC pre-certification form duly approved by the CEC	
3.	Ten (10) days after the Effective Date	Seller has delivered to Buyer evidence reasonably satisfactory to Buyer that Seller has made all financial security postings for CAISO studies and transmission network upgrades for Full Capacity Deliverability Status	
4.	Within Ten (10) days after the Effective Date	Delivery to Buyer of the Enforceability Opinion	
5.	June 30, 2014	Seller has obtained Site Control	\$3,000 per day
6.	June 30, 2014	Seller has obtained all Permits set forth on <u>Appendix B-1</u> (which shall be final and non-appealable), excluding all Permits not yet required for Seller's development and construction of the Facility but that are reasonably expected to be	\$3,000 per day

Appendix J-1

<b>No.</b>	<b><u>Guaranteed Date</u></b>	<b><u>Milestone Description</u></b>	<b><u>Daily Liquidated Damages/Other Remedy</u></b>
		obtained in due course	
<b>7.</b>	June 30, 2014	Seller has delivered to Buyer true, correct, and complete copies of all documents relating to the environmental condition of the Site in form, scope, and substance reasonably satisfactory to Buyer, including any Phase I Environmental Site Assessment prepared relative to the Site	
<b>8.</b>	June 30, 2014	Seller has delivered to Buyer a copy of Seller's policy of title insurance in form reasonably satisfactory to Buyer	
<b>9.</b>	June 30, 2014	Closing of Project Financing, if applicable	
<b>10.</b>	June 30, 2014	Construction Start Date	\$4,000 per day
<b>11.</b>	December 1, 2014	Initial Delivery Date	
<b>12.</b>	December 31, 2014	Commercial Operation Date	\$4,000 per day

**APPENDIX J  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**AUTHORIZED REPRESENTATIVES;  
BUYER AND SELLER BILLING, NOTIFICATION AND  
SCHEDULING CONTACT INFORMATION**

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

- 1.1 Buyer:

Executive Director  
Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: bcarnahan@scppa.org

- 1.2 Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

2. **Billings.** Billings and payments pursuant to Article XI and Appendix A shall be transmitted to the following addresses:

- 2.1 If Billing to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Payable  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: voates@scppa.org

2.2 If Payment to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Payable  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: voates@scppa.org

2.3 If Payment or Billing to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Accounts Receivable  
Telephone: (415) 675-1500 ext 407  
Facsimile: (415) 675-1501  
Email: ap@recurrentenergy.com

3. **Notices.** Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: General Counsel's Office  
Telephone: (415) 675-1500 ext 413  
Facsimile: (415) 675-1501  
Email: legal@recurrentenergy.com

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority

c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 7.5 shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740

Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

300 California St, Suite 700  
San Francisco, CA 94104  
Attention: Operations & Maintenance  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: ops@recurrentenergy.com

**APPENDIX K  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC  
[RESERVED]**

**APPENDIX L-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification ("***Certification***") of the Construction Start Date is delivered by RE Columbia Two LLC ("***Seller***") to Southern California Public 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:

1. the EPC Contract related to the Facility was executed on \_\_\_\_\_;
2. the Notice to Proceed with the construction of the Facility was issued on \_\_\_\_\_ (attached); and
3. the Construction Start Date has occurred.

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

**RE COLUMBIA TWO LLC**

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

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

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

**APPENDIX L-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("**Certification**") of the Commercial Operation is delivered by [independent engineer] ("**Engineer**") to Southern California Public Power Authority ("**Buyer**") in accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between RE Columbia Two LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Equipment sufficient to generate at least ninety-five percent (95%) of the Contract Capacity of the Facility has been erected in accordance with the equipment manufacturer's specifications ("**Initial Mechanical Completion**");
2. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
3. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Facility Energy;
4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
5. The Facility is operational and interconnected with the CAISO grid and released by the CAISO for Commercial Operation and capable of delivering Facility Energy through the permanent interconnection facilities for the Facility.

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

EXECUTED by [INDEPENDENT ENGINEER]  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[INDEPENDENT ENGINEER]

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

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

**APPENDIX M  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF SEPTEMBER 19, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
RE COLUMBIA TWO LLC**

**INTEGRATION COST CHARGE CODE SCHEDULE**

This Appendix shall be completed and updated from time to time by the Parties in accordance with Section 7.3.

## **DISCUSSION CALENDAR**

Assistant General Manager/ Resources Reiko Kerr reported on Item 7 and Item 8 as one presentation. Staff requested to add the following recommendation to both items:

5. Authorize the City Manager, or his designee, to contract up to an additional combined total of 15 MW under the PSAs (First Solar’s Kingbird = 6 MW; and Recurrent Energy’s Clearwater and Columbia = 9 MW) in the event other SCPPA participants in the Projects fail to obtain timely approvals from their respective City Councils to participate in the Projects in order to preserve the financial viability of the Projects.

Each item was approved separately with the added recommendation.

### 7 POWER SALES AGREEMENTS BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY AND THE CITY OF RIVERSIDE – FIRST SOLAR’S KINGBIRD SOLAR PHOTOVOLTAIC PROJECT

Following discussion, the Board of Public Utilities approved and recommended that the City Council:

1. Approve the 20-year Power Sales Agreement (PSA) between SCPPA and the City of Riverside to provide renewable solar photovoltaic energy and Renewable Energy Credits from the First Solar Kingbird Solar Photovoltaic Project;
2. Authorize the City Manager, or his designee, to execute any future amendments to the PSA under terms and conditions substantially similar or superior to these PSA;
3. Authorize the Public Utilities General Manager, or his designee, to execute any documents necessary to administer the PSA that are consistent with the established policies by the City Council;
4. Authorize the City Manager or his designee to terminate the PSA for circumstances provided in the PSA (e.g., Project is no longer viable, or the annual performance standard is not met); and
5. Authorize the City Manager, or his designee, to contract up to an additional 6 MW under the PSAs in the event other SCPPA participants in the Projects fail to obtain timely approvals from their respective City Councils to participate in the Projects in order to preserve the financial viability of the Projects.

Motion – Elliott. Second – Cole.

Ayes: Scott-Coe, Elliott, Cash, Roberts, Walcker, Cole, and Austin.

Absent: Ian Davidson (unexcused absence)  
Darrell Ament (excused absence due to sick)

8 POWER SALES AGREEMENTS BETWEEN SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY AND THE CITY OF RIVERSIDE – RECURRENT ENERGY’S CLEARWATER AND COLUMBIA TWO SOLAR PHOTOVOLTAIC PROJECTS

Following discussion, the Board of Public Utilities approved and recommended that the City Council:

1. Approve the 20-year Power Sales Agreements (PSAs) between SCPPA and the City of Riverside to provide renewable solar photovoltaic energy and Renewable Energy Credits from Recurrent Energy’s Clearwater and Columbia Two Solar Photovoltaic projects;
2. Authorize the City Manager, or his designee, to execute any future amendments to the PSAs under terms and conditions substantially similar or superior to these PSAs;
3. Authorize the Public Utilities General Manager, or his designee, to execute any documents necessary to administer the PSAs that are consistent with the established policies by the City Council;
4. Authorize the City Manager or his designee to terminate the PSA for circumstances provided in the PSAs (e.g., Projects are no longer viable, or the annual performance standard is not met); and
5. Authorize the City Manager, or his designee, to contract up to an additional 9 MW under the PSAs in the event other SCPPA participants in the Projects fail to obtain timely approvals from their respective City Councils to participate in the Projects in order to preserve the financial viability of the Projects

Motion – Cole. Second – Austin.

Ayes: Scott-Coe, Elliott, Cash, Roberts, Walcker, Cole, and Austin.

Absent: Ian Davidson (unexcused absence)  
Darrell Ament (excused absence due to sick)