ATTACHMENT C

TO

Q1/Q2 2026 Renewable Energy Resources and Energy Storage Solutions RFP

SCPPA PRO FORMA PPA (CAISO/ IID)

SCPPA PRO FORMA PPA (CAISO/ IID)
RENEWABLE ENERGY WITH STORAGE

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [], [a [Delaware] limited liability company] ("**Seller**").

Buyer: Southern California Public Power Authority, a California joint powers authority ("**Buyer**").

Description of Facility: [A dedicated and separately metered [X] MW [solar photovoltaic] generating facility, along with a [co-located and dedicated] [Y MW / Z MWh] [battery energy storage facility], all located in [], as further described in Exhibit B]]

Milestones:

Milestone	Date for Completion
Site Control evidence delivered to Buyer	
CEC Precertification obtained	
Documentation of Conditional Use Permit if required: **[ ] CEQA, [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR**	
Seller's receipt of Phase I and Phase II Interconnection Study results for Seller's Interconnection Facilities	
Interconnection Agreement executed	
Financial Close	
Expected Construction Start Date	
Guaranteed Construction Start Date	
Initial Synchronization	
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	

SCPPA PRO FORMA PPA (CAISO/ IID)
RENEWABLE ENERGY WITH STORAGE

Milestone	Date for Completion
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	
COD Deadline	

Guaranteed Generating Facility Capacity: [X] MW

Guaranteed Storage Capacity: [Y] MW at [four (4) hours] of continuous discharge [[Z] MWh]

Delivery Term: [Twenty (20)] years, consisting of: (i) the Initial Stub Year; (ii) each of the following [nineteen (19)] full calendar years; and (iii) the Final Stub Year (a total of [twenty-one "Contract Years" over twenty (20) calendar years])

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)	Guaranteed Energy Production (MWh) – 85% of Expected Energy
ISY1*	[INSERT TOTAL FULL CALENDAR YEAR AMOUNT]	
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		

12		
13		
14		
15		
16		
17		
18		
19		
20		
FSY21*		

* Figure shall be prorated in accordance with the Annual Production Breakdown

Annual Production Breakdown

Month	Days in Month	Percent Annual Production in Month
January	31	[]
February	28	[]
March	31	[]
April	30	[]
May	31	[]
June	30	[]
July	31	[]
August	31	[]
September	30	[]

October	31	[]
November	30	[]
December	31	[]

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
ISY1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	

18	
19	
20	
FSY21	

Contract Price:

The Renewable Rate shall be: $XX.XX/MWh (flat) with no escalation

The Storage Rate shall be: $X.XX/kW-mo. (flat) with no escalation

Product

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (including, but not limited to, Renewable Energy Credits, in accordance with the applicable checked box below):
  - ☒ Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
  - ☐ Portfolio Content Category 3
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Full Capacity Deliverability Status

Scheduling Coordinator: Buyer

Security Amounts:

Development Security: $100/kW of Guaranteed Capacity

Performance Security: $150/kW of Installed Capacity

Exhibits:

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____, 202_ (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

WHEREAS, on [DATE], Buyer issued a request for proposals ("RFP") to acquire renewable energy resources;

WHEREAS, on [DATE], an initial response was submitted on behalf of Seller to Buyer's RFP and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, certain renewable energy, capacity rights, and associated environmental attributes; and

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

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit T.

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Qualified Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there

are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

"**Ancillary Services**" means all ancillary services, as defined in the CAISO Tariff, that the Facility is capable of providing now or in the future consistent with the Operating Restrictions, as well as any other present or future ancillary products, services, or attributes, including imbalance reserve, reliability capacity up, reliability capacity down, that may be produced by or associated with the Facility.

"**Approval Deadline**" has the meaning set forth in Section 2.6.

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

"**Approved Vendor**" means any (a) vendor specified in Exhibit AD or (b) any vendor reasonably acceptable to Buyer.

"**Authorized Auditors**" means representatives of Buyer or Buyer's agents who are authorized to conduct audits on behalf of Buyer.

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

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

"**Auxiliary Use**" means the Energy that is used (including Energy used during the charging or discharging of the Storage Facility) within the Storage Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the operation of the Storage Facility.

"**Availability Notice**" means Seller's availability forecasts issued pursuant to Section 4.3 with respect to the Available Effective Storage Capacity and Available Storage Capability, which shall include any updates from Seller with respect to Facility outages or availability as reported to CAISO (including as reported in OMS).

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

"**Available Effective Storage Capacity**" has the meaning in Exhibit AB.

"**Available Storage Capability**" has the meaning in Exhibit AB.

"**Bankrupt**" or "**Bankruptcy**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding

or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), or (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

"**Battery Charging Factor**" means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

"**Battery Discharging Factor**" means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Approvals**" has the meaning set forth in Section 2.6.

"**Buyer Bid Curtailment**" means the occurrence of both of the following:

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

(b) for the same time period as referenced in (a), Buyer or the SC for the Generating Facility did not submit a Self-Schedule for the MWhs subject to the reduction.

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

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

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment or (b) a Buyer Curtailment Order; *provided further*, that duration of any Buyer Curtailment Period shall not include curtailments due

to Seller's failure to operate the Facility in accordance with the Agreement or other Seller nonperformance.

"**Buyer Dispatched Test**" has the meaning in Section 4.9(c).

"**Buyer RA Replacement Price**" means, with respect to each MW of RA Shortfall, (a) if Buyer purchases replacement Resource Adequacy Benefits from a generating facility other than the Facility prior to the applicable CAISO submission deadline, an amount equal to the actual amount paid by Buyer to purchase such replacement Resource Adequacy Benefits and any associated costs (such as reasonable attorney's fees) associated with such purchase, and (b) if Buyer does not purchase, or partially purchases, replacement Resource Adequacy Benefits as contemplated by the preceding clause, an amount equal to the average of no less than three broker quotes obtained by Buyer stating the value of the applicable remaining portion of the RA Shortfall; *provided*, *however*, that if three broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the RA Replacement Price will be equal to the average of any available broker quotes.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.10(a).

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point, as well as Generating Facility Energy delivered to the Delivery Point or the Storage Facility or all Charging Energy and Discharging Energy delivered to or from the Delivery Point, as applicable.

"**CAISO Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

"**CAISO Charges Invoice**" has the meaning set forth in Exhibit K.

"**CAISO Dispatch**" means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

"**CAISO Tariff**" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including

the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

"**Calculation Interval**" has the meaning set forth in Exhibit AB.

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

"**Capacity Attributes**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed, including under CAISO market rules, including Resource Adequacy Benefits. For the avoidance of doubt, the Capacity Attributes include, but are not limited to: (i) Flexible Capacity Requirement Attributes equal to the Qualifying Capacity of the Storage Facility; (ii) System Capacity Requirement Attributes equal to the Qualifying Capacity of the Facility; and (iii) (if applicable based on the location of the Facility) Local Capacity Requirement Attributes equal to Qualifying Capacity of the Facility.

"**Capacity Damages**" means collectively Storage Capacity Damages and Generating Facility Capacity Damages.

"**CEC**" means the California Energy Commission or its successor agency performing similar statutory functions.

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

"**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.

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

"**CEQA"** means the California Environmental Quality Act.

"**CEQA Determinations**" means that both: (a) The lead agency conducting the review of the Facility as required under CEQA shall have (i) determined that the Facility is exempt from CEQA or has reviewed and approved the CEQA documents and issued a negative declaration or mitigated negative declaration, and (ii) filed a notice of exemption or notice of determination (as applicable) in compliance with CA Public Resources Code §21152 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 NOE Completion**" means Buyer or any Participating Member of Buyer (as applicable), has filed a notice of exemption pursuant to Title 14, California Code of Regulations, Section 15277 in the applicable county, and at least thirty-five (35) days shall have expired since such filing without legal challenge (or, in the event of a challenge, the challenge shall have been concluded by fully and finally determined adverse to the challenger by final judgment or by settlement).

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

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

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) solely as part of a tax monetization financing in accordance with this Agreement shall be excluded from the total outstanding equity interests in Seller.

"**Charging Energy**" means all Energy delivered to the Storage Facility through Generating Facility Energy or Grid Charging Energy pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted pursuant to the CAISO Tariff for any applicable Electrical Losses and Station Use.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC, or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or specified Stored Energy Level; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice. Any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**COD Certificate**" has the meaning set forth in Exhibit J.

"**COD Deadline**" or "**Commercial Operation Deadline**" means [DATE], which is the two hundred and seventy (270) day maximum extension to the Guaranteed Commercial Operation Date provided on the Cover Sheet, which date may not be extended for any reason.

"**Commercial Operation**" has the meaning set forth in Exhibit J.

"**Commercial Operation Date**" or "**COD**" means the date Commercial Operation is achieved.

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

"**Commercial Operation Storage Capacity Test**" means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit J.

"**Compliance**" has the meaning set forth in Section 3.10.

"**Compliance Actions**" has the meaning set forth in Section 3.11(a).

"**Compliance Commitment**" has the meaning set forth in Section 3.11.

"**Compliance Replacement Price**" has the meaning set forth in Section 3.11.

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

"**Consent to Collateral Assignment**" has the meaning set forth in Section 14.2.

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

"**Construction Start**" has the meaning set forth in Exhibit J.

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

"**Contract Price**" has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

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

"**Contract Year**" means (i) the Initial Stub Year; (ii) each of the following [XXX] calendar years, beginning on the first day of January following the end of the Initial Stub Year and ending with December 31 of such [XXX]th calendar year; and (iii) the Final Stub Year.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering

into new arrangements which replace the Agreement, excluding attorney's fees, if any, incurred in connection with terminating the Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

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

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

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Curtailment Cap**" (measured in MWh) means, for each Contract Year, an amount of Energy equal to the Guaranteed Capacity multiplied by fifty (50) hours.

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission Maintenance Outage; or

(d) a curtailment in accordance with Seller's obligations applicable to the Facility under its Interconnection Agreement with the Transmission Provider or distribution operator.

For the avoidance of doubt, if Buyer or Buyer's SC submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears (in full) the applicable CAISO market for the full amount of Facility Energy forecasted to be generated

by or delivered from the Facility for such time period, then any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

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

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

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

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

"**Dedicated Interconnection Capacity**" means the amount that is permitted to be delivered by the Facility to the Delivery Point at all times (including under Seller's Interconnection Agreement), which shall be for Buyer's sole use and shall be in an amount not less than the Guaranteed Capacity.

"**Deemed Delivered Energy**" means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period. The amount shall be equal to (A) the Real-Time Forecast (of the hourly expected Generating Facility Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period) or other industry-standard methodology mutually agreed to by Buyer and Seller that utilizes meteorological conditions on the Site as input for the period of time during the Buyer Curtailment Period, less (B) the amount of Generating Facility Energy delivered to the Storage Facility or to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided*, if, however, the applicable difference is negative, then the Deemed Delivered Energy shall be zero (0). Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Facility due to a Forced Facility Outage or any unexcused unavailability of the Facility.

"**Default**" or "**Event of Default**" has the meaning set forth in Section 11.1.

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

"**Deficient Month**" has the meaning set forth in Section 4.10(e).

"**Delay Damages**" means Construction Delay Damages and Commercial Operation Delay Damages.

"**Delivery Point**" has the meaning set forth in Exhibit B.

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

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

"**Development Security**" means a Letter of Credit issued from a Qualified Issuer substantially in the form of Exhibit F, in the amount specified for the Development Security on the Cover Sheet.

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Storage Facility pursuant to a Discharging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, net of Electrical Losses and Station Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer, Buyer's SC, or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice, and any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

"**Dispatch Notice**" means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer's SC, to Seller, directing the Storage Facility to charge or discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions. Dispatch Notices may be communicated electronically (i.e., through ADS, AGC or e-mail), or telephonically, in accordance with the procedures set forth in Section 4.11. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) without further notification to, or consent being required from, either Party with respect to such Party being recorded by the other, including by Buyer's designated Scheduling Coordinator.

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

"**Effective Date**" has the meaning set forth on the Preamble.

"**Effective Storage Capacity**" means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit P-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial

Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit AA.

"**Efficiency Rate Factor**" has the meaning set forth in Exhibit A.

"**Electrical Losses**" means all transmission or transformation losses (a) between the Generating Facility and the Delivery Point, (b) between the Storage Facility and the Delivery Point, and (c) between the Delivery Point and the Storage Facility, in each case as applicable.

"**Eligible Intermittent Resource Protocol**" has the meaning set forth in the CAISO Tariff.

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

"**Energy**" means electrical energy, measured in megawatt-hours (MWh).

"**Energy Replacement Damages**" has the meaning set forth in Section 4.7(a).

"**Enforceability Opinion**" means an executed original of a written legal opinion of [SELLER TO PROVIDE], counsel for Seller, or other outside counsel of Seller reasonably acceptable to Buyer, in form and substance substantially similar to the opinion provided in Exhibit M and reasonably acceptable to Buyer, confirming the valid existence of Seller, the enforceability and due authorization of this Agreement and the other ancillary documents that are agreements between the Parties, and that the execution and delivery of such agreements shall not require any additional consent and shall not result in a breach of any documents, dated as of the Effective Date and addressed to Buyer.

"**EPC Contractor**" means [SELLER TO PROVIDE] or one or more engineering, procurement, and construction contractors, or if not utilizing an engineering, procurement and construction contractor, one or more entities having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of facilities of the same type as the Facility.

"**EPS**" or "**Emissions Performance Standard**" means Section 8340 and 8341 of the California Public Utilities Code, or its successor (including comparable state or federal programs).

"**EPS Compliance**" or "**EPS Compliant**" when used with respect to the Facility or any other facility providing Replacement Product at any time, means that the Facility or any other facility, as applicable, satisfies both the CPUC and CEC greenhouse gas emission performance standard in effect at such time for electric generation facilities owned or operated (or both) by load-serving entities, or for which a load- serving entity has entered into a contractual agreement for the purchase of power from such facilities, as established by the CPUC and CEC under Sections

8340 and 8341 of the California Public Utilities Code or its successor or comparable state or federal programs. If it is impossible for the Facility or any other facility, as applicable, to satisfy both the CPUC and CEC Performance Standards in effect at any time, the Facility or any other facility, as applicable, shall be deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the CPUC performance standard in effect at the time that it is possible for the Facility or any other facility, as applicable, 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 implemented and amended from time to time, or any successor laws or regulations in the State of California.

"**Excess MWh**" has the meaning set forth in Exhibit A.

"**Expected Commercial Operation Date**" has the meaning set forth on the Cover Sheet.

"**Expected Construction Start Date**" has the meaning set forth on the Cover Sheet.

"**Expected Energy**" means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer from the Generating Facility to the Delivery Point during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Generating Facility Capacity to Installed Generating Facility Capacity pursuant to Section 5(a) of Exhibit J, if applicable.

"**Facility**" means the combined Generating Facility and the Storage Facility.

"**Facility Cost**" means, measured as of any date, the aggregate amount of all costs and expenses incurred by Seller during the Contract Term for the development, design, engineering, equipping, procuring, constructing, installing, starting up, and testing of the Facility, including (a) the cost of all labor, services, materials, suppliers, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (b) the cost of acquiring and maintaining Site Control, (c) real and personal property taxes, ad valorem taxes, sale, use, and exercise taxes, and insurance (including title insurance) premiums payable with respect to the Facility, (d) initial working capital requirements of the Facility, (e) the cost of acquiring the Permits for the Facility, and (f) the cost of establishing a spare parts inventory for the Facility.

"**Facility Debt**" means, measured as of any date, the payment obligations of Seller in connection with borrowed money, including (a) principal of and premium on indebtedness, (b) fees, charges, expenses, and penalties related to indebtedness, (c) amounts due upon acceleration or in connection with prepayment or restructuring of indebtedness, and (d) swap or interest rate hedging breakage costs.

"**Facility Energy**" means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meters.

"**Facility Meter(s)"** means the Generating Facility Meter and the Storage Facility Meter, which are CAISO Approved Meters and will measure all Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, each Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step-up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"**Federal Financial Regulator**" means the United States Federal Reserve System, Office of Comptroller of the Currency, or Federal Deposit Insurance Corporation, or any successor entity thereto.

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

"**Final Stub Year**" means the period beginning on the first day of January following the [XX]th full calendar year after the Commercial Operation Date and ending at 24:00 hours on the date that, together with the number of days in the Initial Stub Year, would be equal to three hundred sixty-five (365) days.

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

"**Flexible Capacity**" means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

"Flexible Capacity Requirement Attributes" means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to flexible resource capacity requirements as prescribed by the CPUC, the CAISO or other regional entity, and that are associated with the electric capability of the Facility.

"**Flexible RAR**" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff or by any other Governmental Authority.

"**Force Majeure**" or "**Force Majeure Event**" has the meaning set forth in Section 10.1(a).

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

"**Forecasted Product**" has the meaning set forth in Section 4.3(b).

"**Forecasting Penalty**" has the meaning set forth in Section 4.3(f).

"**Foreign Government**" means any national, international, intergovernmental, subnational or local governmental, quasi-governmental, judicial, regulatory or administrative agency, council, parliament, court, commission, bureau, entity, or other body exercising any legal, administrative,

bank resolution, executive, judicial, legislative, police, policy, treaty, regulatory or taxing authority or power that is not the United States of America or a political subdivision thereof (including for avoidance of doubt of any state, local, or municipality located within the United States of America).

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.10(a).

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

"**Future Environmental Attributes**" means any and all future generation, emissions, air quality, or other environmental attributes under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto), including under RPS regulations and any applicable Law, that becomes recognized after the Effective Date including related to the generation of electrical energy by the Facility, its displacement of conventional generation, and any other environmental characteristic.

"**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.

"**Gains**" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"**Generating Facility**" means the renewable energy generating facility described on the Cover Sheet and in Exhibit B, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) Generating Facility Energy to the Delivery Point, and (ii) Generating Facility Energy used as Charging Energy to the Storage Facility; *provided*, the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"**Generating Facility Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"**Generating Facility Energy**" means all Energy that is delivered from the Generating Facility to Storage Facility or directly to the Delivery Point as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted to exclude any applicable Electrical Losses and Station Use, and to exclude Energy that serves Station Use or is stored in the Storage Facility to serve Station Use.

"**Generating Facility Meter**" means the CAISO Approved Meter, along with a CAISO-approved and compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Generating Facility Energy for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Generating Facility Metering Point**" means the location or locations of the Generating Facility Meter shown on Exhibit W.

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

"**Green Attributes**" means any and all current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility, and its displacement of conventional energy generation or any other environmental characteristics. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights; and (4) Future Environmental Attributes. Green Attributes do not include (i) any energy or capacity attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state,

or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

"**Grid Charging Energy**" means all Charging Energy used to charge the Storage Facility other than Generating Facility Energy, which is delivered from the CAISO Grid to the Storage Facility by Seller in accordance with Prudent Operating Practices and the terms of this Agreement.

"**Guaranteed Capacity**" means the sum of (x) the Guaranteed Generating Facility Capacity and (y) the Guaranteed Storage Capacity.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit J.

"**Guaranteed Construction Start Date**" has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit J.

"**Guaranteed Dischargeable Energy**" means an amount of Discharging Energy equal to the Installed Storage Capacity times four (4) hours, expressed in MWh.

"**Guaranteed Efficiency Rate**" means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed Energy Production**" has the meaning set forth in Section 4.7(a).

"**Guaranteed Generating Facility Capacity**" means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

"**Guaranteed Storage Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for [four (4) hours of continuous discharge], that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Generating Facility Energy, Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

"**Indemnitees**" has the meaning set forth in Section 16.1.

"**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: (a) a member, stockholder, equity holder, director, manager (except as such Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller or any Affiliate of Seller; (b) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with any member of Seller, Seller or any Affiliate of Seller (other than for serving as Independent Manager of Seller); (c) a Person controlling or under common Control with any such stockholder, equity holder, partner, manager, customer, supplier or other like Person; or (d) a member of the immediate family of any such member, stockholder, equity holder, director, officer, employee, manager, partner, customer, supplier or other like Person.

"**Initial Stub Year**" means the period beginning on the Commercial Operation Date and ending at 24:00 hours on December 31 in the year during which the Commercial Operation Date occurs.

"**Initial Synchronization**" means the commencement of delivery of Facility Energy to the Delivery Point in connection with Trial Operations (as defined in the CAISO Tariff).

"**Installed Capacity**" means the sum of (x) the Installed Generating Facility Capacity and (y) the Installed Storage Capacity.

"**Installed Generating Facility Capacity**" means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point and ambient conditions on the date of the performance test), that achieves Commercial Operation (up to but not in excess of the Guaranteed Generating Facility Capacity), as evidenced by a certificate substantially in the form attached as Exhibit P-1 hereto.

"**Installed Storage Capacity**" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for [four (4) hours of continuous discharge], as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point and ambient conditions on the date of the performance test, that achieves Commercial Operation (up to but not in excess of the Guaranteed Storage Capacity), as evidenced by a certificate substantially in the form attached as Exhibit P-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit J.

"**Insurance**" means the policies of insurance as set forth in Exhibit G.

"**Inter-SC Trade**" has the meaning set forth in the CAISO Tariff.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System and will have capacity rights equal or greater than the amount of the Guaranteed Capacity,

and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

"**kWh**" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a Qualified Issuer, substantially in the form of the letter of credit set forth in Exhibit F.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"**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 Person in or with respect to any real or personal property.

"**Local Capacity Area Resource**" has the meaning set forth in the CAISO Tariff.

"**Local RAR**" means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority. "Local RAR" may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

"**Losses**" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Capacity Attributes.

"**Lost Output**" has the meaning set forth in Section 4.7(a).

"**Major Equipment**" means the Facility's inverters, transformers, batteries and associated cooling equipment (if any), photovoltaic panels and tracking components (if any), and any other critical Facility component.

"**Maximum Charging Capacity**" means the maximum power output level, in MW, at which the Storage Facility can be charged, and is an amount at least equal to the Installed Storage Capacity.

"**Maximum Discharging Capacity**" means the maximum power output level, in MW, at which the Storage Facility can be discharged, and is an amount at least equal to the Installed Storage Capacity.

"**Milestones**" means the significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"**Minimum Storage Ancillary Services**" means those Ancillary Services for the Storage specifically identified in Exhibit AC, as each such Ancillary Service is defined in the CAISO Tariff as of the Effective Date.

"**Monthly Capacity Payment**" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Storage Product, as calculated in accordance with Exhibit A.

"**Monthly Forecast**" has the meaning set forth in Section 4.3(b).

"**Monthly Storage Capacity Availability**" has the meaning set forth in Exhibit A.

"**Moody's**" means Moody's Ratings, or its successor.

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

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

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the LMP at the Facility's PNode is less than zero dollars ($0).

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

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

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

"**Non-Consolidation Opinion**" means a reasoned opinion of [SELLER TO PROVIDE], Seller's legal counsel, addressed to Buyer, in form and substance substantially similar to the opinion provided in Exhibit L and reasonably acceptable to Buyer and its counsel, as to the non-consolidation of Seller in a Bankruptcy proceeding (including of the Ultimate Parent or any upstream equity owner), addressed and delivered to Buyer on or before the Effective Date.

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

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

"**Operating Restrictions**" means those restrictions, rules, requirements, and procedures set forth in Exhibit AC.

"**Participating Member(s)**" means [BUYER TO PROVIDE].

"**Party**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" means the prior Contract Year.

"**Performance Security**" means a Letter of Credit in the amount specified for the Performance Security on the Cover Sheet.

"**Permits**" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be filed, submitted, 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, sale and delivery of Products from the Facility, including 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 CEQA Determinations and those permits listed on Exhibit C.

"**Permitted Encumbrances**" means (a) the Lien in favor of the Facility Lender, (b) any Lien approved by Buyer in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (c) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, and that such proceedings end by the expiration of the Contract Term, (d) 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 so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, and (e) easements, rights-of-way, reservations, restrictions, defects in title, encroachments and other similar non-monetary encumbrances that have been identified to Buyer in writing prior to the Commercial Operation Date and that do not interfere with or impair the operation of the Facility or performance of Seller's obligations as contemplated by this Agreement.

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

"**Phase I and Phase II Interconnection Study**" has the meaning set forth in the CAISO Tariff.

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

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Storage Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Storage Facility.

"**PNode**" has the meaning set forth in the CAISO Tariff.

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

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

"**Portfolio Content Category 2**" or "**PCC2**" or "**PCC 2**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

"**Portfolio Content Category 3**" or "**PCC3**" or "**PCC 3**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

"**Principals**" means any board chair, president, chief executive officer, chief operating officer and any other individual who serves in the functional equivalent of one or more of those positions, as well as any individual who holds an ownership interest in Seller or any Upstream Equity Owner of at least twenty percent (20%), and any employee of Seller who is authorized by Seller to represent Seller before Buyer.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit N.

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

"**Qualified Issuer**" means a U.S. commercial bank or a foreign bank with a U.S. branch (each such bank as approved by Buyer in writing, which approval shall not be unreasonably withheld, conditioned or delayed) with such bank having U.S.-based assets of at least $10 billion and a Credit Rating of (1) "A2" 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 (2) "A2" 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 Operator**" means a Person reasonably acceptable to Buyer that, in either case, has at least three (3) years of operating experience within the six (6) years prior to the date of determination with types of facilities similar to the Facility that are in excess of [XXX] MW in capacity.

"**Qualified Transferee**" means any entity that satisfies all the following requirements:

(a) Has or is controlled by an Affiliate that has a tangible net worth of not less than one hundred fifty million dollars ($150,000,000) and a Credit Rating of at least (i) "A2" 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) "Aa2" or higher by Moody's, or "AA" or higher by S&P if such Person is rated by either S&P or Moody's;

(b) Is a Qualified Operator, or has retained a Qualified Operator with such experience to operate the Facility;

(c) The entity and any Affiliates are not in dispute, litigation, or adverse interest with Buyer or its members;

(d) Such entity has executed a written assumption agreement in favor of Buyer pursuant to which such entity shall assume all of the obligations of Seller under the PPA; and

(e) Is a Special Purpose Entity.

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

"**RA Compliance Showing**" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, as well any successor resource adequacy program showing, or showing to any Governmental Authority.

"**RA Guarantee Date**" means the Commercial Operation Date.

"**RA Shortfall**" means the Qualifying Capacity of the Facility (or, if Seller has not obtained certification from the CAISO of the Facility's Qualifying Capacity or such Qualifying Capacity is materially smaller from that of facilities of the same resource type as the Facility, the amount of Qualifying Capacity the Facility would reasonably be estimated by Buyer to qualify for, based on the CAISO-approved qualifying capacity methodologies then in effect), minus (B) the Net Qualifying Capacity of the Facility able to be shown by Buyer plus any Replacement RA that was included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity and did not provide any Replacement RA that was shown in a Showing Month for Buyer, the Net Qualifying Capacity of the Facility shall be deemed to be zero (0) MW).

"**RA Shortfall Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.7(b).

"**RA Shortfall Month**" means, for purposes of calculating an RA Shortfall Amount under Section 3.7(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which a RA Shortfall exists.

"**Real-Time Forecast**" has the meaning set forth in Section 4.3(d).

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

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

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

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

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

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); and (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax Credits or any similar or substitute payment available under subsequently enacted federal legislation.

"**Renewable Rate**" has the meaning set forth on the Cover Sheet.

"**Replacement Green Attributes**" has the meaning set forth in Exhibit T.

"**Replacement Product**" has the meaning set forth in Exhibit T.

"**Replacement RA**" means resource adequacy benefits equivalent to Resource Adequacy Benefits that would have been provided by the Facility with respect to the applicable month in which a RA Shortfall Amount is due to Buyer, and located within both the CAISO Balancing Authority Area and SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource for the area where the Facility is located.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include Local Capacity Requirement Attributes, System Capacity Requirement Attributes, Flexible Capacity Requirement Attributes, Flexible Capacity, and any system, local, zonal or otherwise locational attributes associated with the Facility.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, or by any local regulatory authority or Governmental Authority.

"**Resource Adequacy Resource**" shall have the meaning used in Resource Adequacy Rulings.

"**Resource Adequacy Rulings**" means any existing or subsequent ruling or decision, or any other laws, rules or regulations enacted, adopted or promulgated pertaining to or addressing resource adequacy by the CAISO or any other applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

"**RPS Compliance**" or "**RPS Compliant**" means, when used with respect to the Generating Facility (or Facility, as appliable) or any other facility at any time, that all Energy from such facility at all times shall, together with all of the associated Green Attributes, qualify as a "portfolio content category 1" eligible renewable resource, or equivalent if the RPS is changed, under the RPS and meet the requirements of Public Utilities Code Section 399.16(b)(1).

"**RPS Compliance Period**" means each "Compliance Period" as defined in the RPS Law.

"**RPS Compliance Shortfall Energy**" means the difference between the Adjusted Energy Production and the Guaranteed Delivered Energy for such RPS Compliance Period.

"**RPS Law**" means renewable energy programs and policies established and amended by California State Senate Bills 1078 (2002), X1-2 (2011), 350 (2015) and 100 (2018) and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, and all related policies, regulations and guidelines, including the most recent Renewables Portfolio Standard eligibility guidebook issued by the CEC, as amended from time to time, or its successor document.

"**RPS Shortfall Penalty**" has the meaning in Section 4.7(b).

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

"**SCADA Failure**" means Buyer or a Participating Member's inability to access its SCADA System due to an error or failure of Seller's or its subcontractors' equipment or systems, or operation or maintenance thereof.

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

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

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

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

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

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

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller Initiated Test**" has the meaning set forth in Section 4.9(c).

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.10(a).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0).

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

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

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

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

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

"**Site Control**" means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns the Site; (b) is the lessee of the Site, and is permitted to perform all of its obligations under this Agreement; or (c) has otherwise provided evidence satisfactory to Buyer of Seller's exclusive right to control the Site so as to permit Seller to perform all of its obligations

under this Agreement. During the Contract Term, Seller shall promptly upon Buyer's request provide evidence satisfactory to Buyer of Seller's maintenance of Site Control throughout the Contract Term, including as to permit Seller to perform all of its obligations under this Agreement and the ancillary documents to which it is a party.

"**SOC**" or "**State of Charge**" means (a) the Stored Energy Level relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

"**Special Purpose Entity**" means a limited liability company which at all times prior to, on and after the Effective Date meets the following conditions:

(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 Purpose 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, financing, 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, construction, 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) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify its officers, managers or members, as the case may be, other than the Independent Manager in connection with the Independent Manager's actions related to the performance of this Agreement;

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

(n) 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) has had, now has, and will have articles of organization, a certificate of formation or an operating agreement, as applicable, that provides that it will not: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets; (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the affirmative vote of its Independent Manager; or (D) without the affirmative vote of its Independent Manager, 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 loan made by the Facility Lender providing construction financing for the Facility and any loan 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 $[X] in the aggregate, and (iv) such other liabilities that are permitted pursuant to this Agreement.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"**Station Use**" means, in addition to all Auxiliary Use, the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

"**Storage Capacity Damages**" has the meaning set forth in Section 5 of Exhibit J.

"**Storage Capacity Test**" means any test or retest of the Storage Facility to establish the Installed Storage Capacity or Effective Storage Capacity, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit AA.

"**Storage Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit B (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

"**Storage Facility Meter**" means the CAISO Approved Meter that is a bi-directional revenue quality meter or meters, along with a CAISO-approved and compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility and the amount of Discharging Energy discharged from the Storage Facility at the Delivery Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Storage Facility Metering Point**" means the location or locations of the Storage Facility Meter shown on Exhibit W.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm

to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

"**Tax Credits**" means any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

"**Tax Equity Investor**" means a Facility Lender approved by Buyer in connection with a tax financing.

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

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

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

"**Test Energy Rate**" has the meaning set forth in Section 3.5.

"**Transmission Maintenance Outage**" means an outage on the Transmission System, other than a System Emergency, connected with scheduled or unscheduled maintenance of the Participating Owner's Transmission facilities that is not caused by Seller's actions or inactions and that prevents Buyer from receiving or Seller from delivering Facility Energy onto the Transmission System.

"**Transmission Provider**" means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

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

"**Ultimate Parent**" means (a) as of the Effective Date, _____, a [State of organization] [Type of entity], and (b) from and after any Change in Control that is approved by Buyer, the entity as updated in Exhibit R.

"**Unavailable Calculation Interval**" has the meaning set forth in Exhibit AB.

"**Upstream Equity Owner(s)"** means any upstream equity owner of Seller at or below the Ultimate Parent, as they are identified in Exhibit R.

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

"**Vesting Date**" has the meaning set forth in Section 2.6.

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

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

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.10(e).

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

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

"**WREGIS Withholding Amount**" has the meaning set forth in Section 4.10(e).

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

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

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

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) In the event of any conflict or inconsistency between or among the terms and conditions of any of the body of this Agreement, the Cover Sheet and Exhibits attached to the body of this Agreement, the following order of precedence, consistent with the controlling requirements of Law, shall govern the interpretation of this Agreement: (i) the Cover Sheet, (ii) the body of this Agreement, and (iii) the Exhibits attached to the body of this Agreement.

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

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided*, subject to Buyer's obligations in Section 3.5, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The provisions of Section 8.3 shall remain in full force and effect for four (4) years following the last payment following termination of this Agreement. The provisions of Article 16 shall survive permanently following the termination of this Agreement. The provisions of Article 18 (except for information marked by Buyer or any Participating Member as critical energy infrastructure information (or CEII), which shall survive indefinitely) shall survive for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent to Commercial Operation. Commercial Operation and the Delivery Term shall not commence until Seller provides and completes to Buyer's reasonable satisfaction each of the following conditions precedent to Commercial Operation set forth below. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all conditions precedent set forth below. Following Buyer's receipt of such Notice, Buyer shall within five (5) Business Days either approve or provide Notice stating in reasonably detail the basis for Buyer's rejection thereof. The conditions precedent to Commercial Operation are as follows:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit O and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit P-1 setting forth the Installed Generating Facility Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

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

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

(d) Seller shall have delivered to Buyer an attestation certificate from an officer of Seller certifying and providing material supporting such certification, including an opinion from Seller's legal counsel, that: (i) all applicable regulatory authorizations, approvals and permits (including Permits) for the operation of the Facility have been obtained and are non-appealable; and (ii) that all conditions of such authorizations, approvals, and permits have been satisfied and shall be in full force and effect, and all conditions of the Agreement for Commercial Operation date have been satisfied;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has attained Full Capacity Deliverability Status for the entire Facility, and the entire Facility is providing Resource Adequacy Benefits to Buyer for the month in which Delivery Term commences;

(i) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(j) Seller has completed all testing and installation as required by Prudent Operating Practice and any requirement of Law to operate the Facility, and taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement and to fully enable the Facility to be Scheduled by Buyer, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator;

(k) Seller has delivered to Buyer an officer's certificate stating that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b);

(l) Insurance requirements for the Facility that are required to be in place during the Delivery Term have been met, including pursuant to Exhibit G, with evidence provided in writing to Buyer;

(m) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages; and

(n) The date is, at the earliest, twelve (12) months before the Guaranteed Commercial Operation Date, and at the latest, the COD Deadline.

2.3 Development; Construction; Progress Reports.

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the end of the Delivery Term, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit N. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the

Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with any applicable requirements of Law, including the Uyghur Forced Labor Prevention Act. Seller and its subcontractors shall only engage and procure Major Equipment from Approved Vendors. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

2.4 Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit J and Section 11.1(b)(ii) and process for the Guaranteed Construction Start Date and Commercial Operation Milestones under this Agreement, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any other Milestone.

2.5 Pre-Commercial Operations Actions. The Parties agree that, in order for Buyer to dispatch the Storage Facility for its Commercial Operation Date, the Seller may have to perform certain of Seller's Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller's delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Storage Facility for the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Storage Facility for the Commercial Operation Date. Seller shall give Buyer at least ninety (90) days' Notice before the Commercial Operation Date, further subject to Section 2.2(n).

2.6 Termination for Failure to Obtain Board and City Council Approvals. Seller acknowledges that board and city council approvals of Buyer and each of the Participating Members, including any Participating Member power sales agreement related to the Agreement as well as (if applicable) CEQA NOE Completion, are required before any of Buyer's obligations under this Agreement are effective. Buyer shall have the right to terminate this Agreement upon written notice to Seller, without penalty, liability or expense, if Buyer and each of the Participating Members have not received their respective board and city council approvals and CEQA NOE Completion, in form and substance acceptable to Buyer and each Participating Member (in each

of Buyer's and Participating Member's sole discretion), and delivered executed power sales agreements to Buyer (collectively, the "**Buyer Approvals**"), within seventy-five (75) days following the Effective Date (the "**Approval Deadline***"*); *provided* that Buyer's right to terminate this Agreement shall expire on the earlier of (i) the date on which the Buyer Approvals have been obtained or (ii) the Approval Deadline (such expiration date, as may be extended in accordance with the final sentence of this Section 2.6, the "**Vesting Date***"*). To exercise its termination right pursuant to this Section 2.6, Buyer shall provide Seller with written notice of such termination within five (5) Business Days after the Approval Deadline. In the event that a challenge is received during the CEQA NOE Completion process prior to the Vesting Date, then without penalty, liability or expense the Vesting Date and the associated termination right under this Section 2.6 shall be extended for the period of such challenge and for five (5) Business Days after such challenge is concluded, but in no event shall the Vesting Date be extended beyond three hundred and sixty (360) days following the Effective Date.

2.7 Termination for Failure to Deliver Post-Effective Date Deliverables. Buyer may, in its sole discretion and without cost or penalty to Buyer, terminate this Agreement, effective upon notice to Seller, if Seller fails to deliver any of the following within five (5) Business Days after the Effective Date: (i) the Enforceability Opinion, and (ii) the Non-Consolidation Opinion.

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility and delivered to Buyer at the Delivery Point at the Contract Price and in accordance with Exhibit A, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit A, Buyer has no obligation to purchase from Seller any product for which the Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, a Curtailment Order, or any nonperformance of Seller. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA and Replacement Product.

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

3.3 Imbalance Energy. Buyer and Seller recognize that in any given Settlement Period the amount of Generating Facility Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the

extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

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

3.5 Test Energy. No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall, at Buyer's election in Buyer's sole discretion, purchase from Seller all Test Energy and any associated Products of the Generating Facility delivered from the Generating Facility directly to the Delivery Point on an as-available basis. Buyer, in its sole discretion, may curtail Test Energy at no cost. As compensation for such Test Energy and associated Product, for ninety (90) days from the first delivery of Test Energy Buyer shall pay Seller an amount equal to X percent (X%) of the Renewable Rate, and thereafter zero dollars ($0) per MWh (the "**Test Energy Rate**").

3.6 Capacity Attributes. Prior to the Commercial Operation Date, Seller shall attain Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

(b) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status for the Facility in the amount of the Guaranteed Capacity (as may be appropriately reduced to the Installed Capacity in accordance with the terms of this Agreement) from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide all Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

(d) If Seller anticipates that it will have any RA Shortfall Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA

in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility unless otherwise agreed by Buyer in its sole discretion, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit X at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer's RA Compliance Showing for such Showing Month.

3.7 Resource Adequacy Failure.

(a) RA Shortfall Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Shortfall Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.7(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Shortfall Amount Calculation. The "**RA Shortfall Amount**" shall equal the product of (A) the RA Shortfall, multiplied by (ii) the Buyer RA Replacement Price.

(c) RA Costs, Fines or Penalties. Seller shall reimburse Buyer for any costs, fines, or penalties assessed against Buyer or any Participating Members to the extent resulting from the RA Capacity not provided by Seller or not timely replaced by Seller with Replacement RA.

3.8 CEC Certification and Verification. Subject to Section 3.11 and in accordance with the timing set forth in this Section 3.8, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the most current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the earlier of: (i) the start of Test Energy deliveries; and (ii) the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.9 Eligibility. Seller, and, if applicable, its successors, represents, warrants, and covenants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("**ERR**") as such term is defined in Public Utilities Code Section 399.12 and applied in Section 399.16; and (ii) the Generating Facility's output delivered to Buyer and the Renewable Energy Credits transferred to Buyer qualify as PCC1 under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty in Section 3.9 to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term

"commercially reasonable efforts" as used in this Section 3.9 means efforts consistent with and subject to Section 3.11.

3.10 Compliance. Seller warrants, warrants, covenants, and guarantees that at all times from the earlier of (i) the start of Test Energy deliveries; and (ii) the Commercial Operation Date, and at all times thereafter until the expiration or earlier termination of the Agreement, the Facility (including the Energy and the associated Green Attributes) shall be RPS Compliant, compliant with CEC Certification and Verification (including with regard to the Generating Facility charging of the Storage Facility), complies with CEC Performance Standards, meets all applicable CEC requirements (including satisfying and fully qualifying as a long term contract and for long term product attributes under the CEC's requirements at, but not limited to, Cal. Code Regs., tit. 20, § 3204), compliant with RAR, and EPS Compliant (together, "**Compliance**" or "**Compliant**"). Subject to Section 3.11, Seller shall assume all risks, costs or expenses associated with, arising from, or resulting from, its obligation to keep the Facility Compliant.

3.11 Compliance Commitment. If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.11 with respect to obtaining, maintaining, conveying or effectuating Compliance, then the Parties agree that Seller shall take all commercially reasonable efforts to comply with such obligations ("**Compliance Commitment**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Commitment, shall be referred to collectively as the "**Compliance Actions**."

(b) During any period in which the Facility is not in Compliance, then Buyer shall pay Seller for Generating Facility Energy delivered during the period during which the Facility is not in Compliance in an amount equal to the applicable Day-Ahead Market LMP at the applicable PNode (such Day-Ahead Market LMP amount subject to a floor of zero dollars ($0)) and such amount in no event to exceed the Renewable Rate (the "**Compliance Replacement Price**") in lieu of the applicable Contract Price. Payment for Generating Facility Energy at the Compliance Replacement Price shall continue until the Facility is brought back into Compliance pursuant to Compliance Actions or the Agreement is terminated pursuant to Section 3.11(c).

(c) If at any time after the earlier of (i) six (6) months of paying the Compliance Replacement Price or (ii) six (6) months after the change in Law, Buyer determines, in its reasonable discretion, that notwithstanding Seller's commercially reasonable efforts, Seller will be unable to bring the Facility into Compliance, Buyer may elect, at its sole discretion, to declare Seller's Default and terminate this Agreement by written notice to Seller.

3.12 Facility Configuration. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

3.13 Decommissioning and Other Environmental Costs Associated with the Site and Facility. Seller shall be solely responsible for any cost of decommissioning and demolition of the Facility and any other environmental cost and liability associated with the Facility or the Site, including but not limited to, costs incurred in connection with acquiring and maintaining all environmental permits and licenses for operation of the Facility, the Facility's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all emission reduction credits or marketable emission trading credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of hazardous substances pre-existing or introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by any events associated with the Site or Facility, or waste or hazardous substances at the Site (together, "**Environmental Costs**").

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs of delivering the Charging Energy from the Generating Facility or the Delivery Point to the Storage Facility (but excluding the cost of Grid Charging Energy itself), and any operation and maintenance charges imposed by the Transmission Provider. Except as otherwise set forth in this Agreement, Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the acceptance and transmission of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges, and supplying Grid Charging Energy to the Delivery Point. The Generating Facility Energy, Charging Energy and Discharging Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit K.

(b) Green Attributes. All Green Attributes associated with Test Energy, Generating Facility Energy, and the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO and are available at the Facility, then Seller shall at Seller's cost coordinate with Buyer to provide such products to Buyer.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants, represents, and covenants that all Product delivered to Buyer is free and clear of all liens (including Liens), security interests, claims and encumbrances of any kind.

(b) Green Attributes. All right, title, and interest related to the Green Attributes shall pass and transfer from Seller to Buyer immediately to the fullest extent allowed by applicable law upon generation, or otherwise immediately upon Seller's production or acquisition of such Green Attributes. Seller shall provide such Green Attributes in accordance with WREGIS, applicable Law, and the corresponding attestation in Exhibit E. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Green Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Green Attributes.

4.3 Forecasting. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use commercially reasonable efforts to forecast accurately, and to the extent not inconsistent with the requirements of this Agreement, shall prepare and provide such forecasts in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Generating Facility Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit Q-2, or as reasonably requested by Buyer.

(b) Monthly Forecast of Generating Facility Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) Generating Facility Energy, (iii) Available Effective Storage Capacity, and (iv) Available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits Q-1, Q-2, Q-3 and Q-4, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall

be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and Buyer's SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts shall be provided by an Approved Forecast Vendor, who shall be replaced with another Approved Forecast Vendor upon Buyer's election in Buyer's sole discretion, and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer and Buyer's SC (if appliable) of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer and Buyer's SC of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Generating Facility Energy for such hour (which assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual Generating Facility Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and

will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Generating Facility Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, or for any Product that could not be delivered due to a Force Majeure Event.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Generating Facility Energy through Buyer Curtailment Orders; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, in addition to the other rights and remedies Buyer has under the Agreement, for each MWh of Generating Facility Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO and any other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in

compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Charging Notices. During the Delivery Term, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, and Seller shall comply with such Charging Notices, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than in accordance with a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO, Transmission Provider, or Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level different than the Stored Energy Level provided for in the Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (a) Seller shall pay Buyer the cost of all such Energy associated with such charging of the Storage Facility (including any Imbalance Energy charges), (b) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (c) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than in accordance with a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from the CAISO, Transmission Provider, or applicable Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice. If, during the Delivery Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(d), then (a) Seller shall be responsible for all costs and penalties associated with such discharging of the Storage Facility, and (b) Buyer shall be entitled to all of the benefits associated with such discharge.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid

Curtailments applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, or as is expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith (including all Imbalance Energy costs associated therewith), and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During any time interval during the Delivery Term in which the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties (including Imbalance Energy costs) resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.5(c)). To the extent the Storage Facility is unable to respond to ADS and AGC signals during any Calculation Interval, then such Calculation Interval shall be deemed an Unavailable Calculation Interval, and Seller shall be responsible for any associated costs or penalties.

(h) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility and in compliance with applicable Law), and (iii) all CAISO costs, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility, including Grid Charging Energy, shall be for Seller's account.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that (i) Seller is responsible for providing or obtaining all Energy to serve Station Use (including paying the cost of any Energy from the local utility to serve Station Use), unless the Energy is used for Auxiliary Use that is directly involved in charging and discharging pursuant to a Charging Notice or Discharging Notice, and aside from Station Use there are no loads permitted without Buyer's consent, (ii) Seller Auxiliary Use shall not exceed [X MWh/yr], and (iii) Seller shall reimburse Buyer for all Auxiliary Use in the manner contemplated by Exhibit A. If any Energy provided by Buyer (i.e., originally delivered as Charging Energy) is used by Seller for Station Use (including Auxiliary Use) and such use violates any CAISO rules, other applicable Laws or any applicable utility tariff, Seller (i) shall be solely responsible (and shall reimburse Buyer, as applicable) for any and all costs, penalties and charges resulting therefrom and (ii) shall take such actions as may be necessary to comply with such CAISO rules, other

applicable Laws or applicable utility tariff. All Charging Energy that is not consumed in Electrical Losses or used for permitted Auxiliary Use shall be used solely to charge the Storage Facility.

(j) Grid Charging. Buyer shall have the right to charge the Storage Facility with Grid Charging Energy without restriction other than the Operating Restrictions. As between the Parties, Buyer shall be deemed to be responsible for all Grid Charging Energy prior to the Delivery Point, and Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Grid Charging Energy at and from the Delivery Point. Seller shall accept all Grid Charging Energy for the Storage Facility delivered to the Delivery Point in accordance with the terms of this Agreement. Seller shall ensure that Seller's Interconnection Agreement contains provisions authorizing Seller to use and operate the Storage Facility in the manner contemplated by this Agreement (including as to Grid Charging Energy). Seller shall track and provide Buyer a report with the amount of Grid Charging Energy used to charge the Storage Facility each month during each Contract Year, and Seller shall comply with any requirement of Law in regards to reporting such Storage Facility grid electricity utilization.

4.6 Facility Maintenance. For avoidance of doubt, and in no way limiting Section 3.1 or Exhibit K:

(a) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Without limiting Seller's responsibilities with regard to the Guaranteed Energy Production, Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(b) If reasonably required in accordance with Prudent Operating Practices, Seller may, upon Buyer's consent, perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a); *provided that* Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff, and Seller shall (A) reimburse Buyer for any cost and penalties Buyer incurs in connection therewith (including replacement Capacity Attributes as required by the CAISO), and (B) limit maintenance repairs performed pursuant to this Section 4.6(b) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(c) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

4.7 Guaranteed Energy Production.

(a) During each Performance Measurement Period, Seller shall deliver to

Buyer an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Generating Facility Energy, as measured in MWh, equal to eighty-five percent (85%) of the Expected Energy for the Contract Year constituting such Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) Generating Facility Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, or Curtailment Periods, (such amount excluding, for avoidance of doubt, any Planned Outage, any Forced Facility Outage, or any other unexcused unavailability of the Facility) which amount shall be calculated using the Real-Time Forecast or an industry-standard methodology agreed to Buyer and Seller that utilizes meteorological conditions at the Site as input ("**Lost Output**"); *provided that*, no such amount of Energy shall be counted as both Deemed Delivered Energy and Lost Output. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit T ("**Energy Replacement Damages**"); *provided*, Seller may, as an alternative with Buyer's permission in Buyer's sole discretion, provide Replacement Product (as defined in Exhibit T) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within thirty (30) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer and in a type and manner consistent with CEC standards, including satisfying and fully qualifying as a long term contract and for long term product attributes under the CEC's requirements, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year unless approved by Buyer in Buyer's sole discretion. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period that occurs during the last year of an RPS Compliance Period, Buyer may elect to direct Seller to pay Buyer the Energy Replacement Damages within thirty (30) days after the end of the Performance Measurement Period.

(b) In addition, Seller shall reimburse Buyer for any and all amounts of reasonably documents penalties or fines incurred or paid by any Participating Member as a result of such Participating Member's noncompliance with EPS Law or RPS Law to the extent such non-compliance was caused by Seller's failure to make up the full amount of RPS Compliance Shortfall Energy applicable to a given RPS Compliance Period before the end of the applicable RPS Compliance Period (the "**RPS Shortfall Penalty**"); provided, that the Buyer shall use commercially reasonable efforts to mitigate any such penalties or fines. The determination of the extent to which such non-compliance was caused by such Seller's failure shall take into account energy shortfalls in the applicable RPS Compliance Period by other generating facilities owned or under contract (directly or indirectly through Buyer) by such Participating Member.

4.8 Storage Facility Availability; Efficiency Rate; Ancillary Services.

(a) During the Delivery Term, the Storage Facility shall maintain an Monthly Storage Capacity Availability during each Contract Year of no less than ninety-eight percent (98%) (the "**Guaranteed Storage Capacity Availability**"), which Monthly Storage

Capacity Availability shall be calculated in accordance with Exhibit AB. Buyer's remedies for a Monthly Storage Capacity Availability for any month that is less than the Guaranteed Storage Capacity Availability shall be an adjustment to the Monthly Capacity Payment by the Monthly Availability Factor pursuant to Section (d) of Exhibit A, and in the case of a Seller Event of Default as set forth in Section 11.1(b)(vi), the applicable remedies set forth in Article 11. In the event of a failure of the Guaranteed Storage Capacity Availability for a period of three (3) consecutive months, the Monthly Capacity Payment shall be for each succeeding month shall be reduced to zero dollars ($0) until Seller has completed all necessary remedial measures to return to compliance with the Guaranteed Storage Capacity Availability.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's remedies for an Efficiency Rate that is less than the Guaranteed Efficiency Rate shall be an adjustment to the Monthly Capacity Payment by the Efficiency Rate Factor pursuant to Section (d) of Exhibit A, and in the case of a Seller Event of Default as set forth in Section 11.1(b)(vii), the applicable remedies set forth in Article 11. In the event of a failure of the Guaranteed Efficiency Rate for a period of three (3) consecutive months, the Monthly Capacity Payment shall be for each succeeding month shall be reduced to zero dollars ($0) until Seller has completed all necessary remedial measures to return to compliance with the Guaranteed Efficiency Rate.

(c) During the Delivery Term, the Storage Facility shall maintain a Dischargeable Energy capability of no less than ninety (90%) of the Guaranteed Dischargeable Energy ("**Minimum Dischargeable Energy Performance Guarantee**"). Buyer's remedies for a Dischargeable Energy capability for any month that is less than the Guaranteed Dischargeable Energy ability shall be an adjustment to the Monthly Capacity Payment by the Monthly Availability Factor pursuant to Section (d) of Exhibit A, and in the case of a Seller Event of Default as set forth in Section 11.1(b)(xii), the applicable remedies set forth in Article 11. In the event of a failure of the Minimum Dischargeable Energy Performance Guarantee for a period of three (3) consecutive months, the Monthly Capacity Payment shall be for each succeeding month shall be reduced to zero dollars ($0) until Seller has completed all necessary remedial measures to return to compliance with the Minimum Dischargeable Energy Performance Guarantee.

(d) Seller shall at a minimum operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Minimum Storage Ancillary Services. To the extent the Storage Facility is unable to provide Ancillary Services or any other guarantee in Exhibit AC for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval (including by reason of failing an Ancillary Services certification test), then as exclusive remedies the applicable Calculation Interval(s) shall be deemed Unavailable Calculation Intervals for purposes of calculating the Monthly Storage Capacity Availability to the extent of such inability or failure, and Seller shall reimburse Buyer for any CAISO charges or penalties arising from the failure to provide such Ancillary Services.

(e) Upon Buyer's reasonable request and at Seller's cost, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein.

4.9 Storage Facility Testing.

(a) Storage Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit AA. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit AA.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. To the extent that any Storage Capacity Tests can be completed remotely consistent with applicable Law and Prudent Operating Practice, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all applicable data and other information arising out of such tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit AA. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity and/or Efficiency Rate, then the actual capacity and/or Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at Seller's cost and at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Dispatch Notices.

(c) Buyer or Seller Initiated Tests. Any discretionary testing of the Storage Facility requested by Buyer other than the Commercial Operation Storage Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test required under Exhibit AA, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy-five percent (75%) of the Installed Storage Capacity, any Storage Capacity Test conducted if the Efficiency Rate immediately prior to such Storage Capacity Test is below the Guaranteed Efficiency Rate, any test where such test fails guarantees provided under this Agreement, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "**Seller Initiated Test**".

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit AA for which there is a stated notice requirement, Seller shall notify Buyer no later than forty-eight (48) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Dispatch Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Monthly Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall pay for all CAISO costs and charges for associated Charging Energy and be entitled to all CAISO revenues associated with Discharging Energy. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment of the Charging Energy for such Seller Initiated Test and Seller shall be liable for any and all CAISO costs and charges, and (2) Buyer shall be entitled to all CAISO revenues associated with the discharge of such Energy, and all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer.

(ii) Except as set forth in Sections 4.9(d)(i), all other costs of any testing of the Storage Facility shall be borne by Seller.

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

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of designee(s) that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall 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 (as that term is defined by WREGIS). Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Generating Facility Energy generated, any fractional MWh

amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(d) Buyer shall make an invoice payment for a given month, as adjusted by the WREGIS Certificate Deficit, in accordance with this Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon generation in accordance with Section 4.2, and Buyer shall pay the WREGIS Withholding Amount previously withheld by Buyer for each MWh for which a WREGIS Certificate was credited to Buyer's WREGIS account in such month in accordance with Section 4.10(e).

(e) A "**WREGIS Certificate Deficit**" means, for any period in the Contract Term, including with respect to Test Energy deliveries, any deficit or shortfall in WREGIS Certificates delivered to Buyer in accordance with this Agreement for a calendar month as compared to the Generating Facility Energy for the same calendar month ("**Deficient Month**"). For any WREGIS Certificate Deficit, Buyer shall have the right to withhold from any payment to Seller or otherwise receive payment from Seller, for each MWh of such deficit in WREGIS Certificates, an amount equal to the lower of: (i) Thirty-Five Dollars ($35) per MWh; or (ii) the Renewable Rate (such amount, the "**WREGIS Withholding Amount**") until such time as the WREGIS Certificate associated with such MWh has been properly credited to Buyer's WREGIS account as set forth in Agreement, and then Buyer shall pay the WREGIS Withhold Amount previously withheld by Buyer for each MWh for which a WREGIS Certificate was credited to Buyer's WREGIS account in such month. Additionally, Seller shall work diligently with WREGIS to address and resolve any causes of a WREGIS Certificate Deficit. In addition to the foregoing, Seller shall document the production and transfer of Green Attributes under this Agreement to Buyer by delivering to Buyer an attestation in substantially the form attached as Exhibit E for the Green Attributes associated with Facility Energy or Replacement Product, if any, measured in whole MWh, or by such other method as Buyer shall designate.

(f) Seller warrants that it will take all necessary steps to allow the Renewable Energy Credits transferred to Buyer to satisfy the California Renewables Portfolio Standard requirements and be tracked in WREGIS prior to the first delivery under the contract.

4.11 Dispatch Notices. Buyer shall have the right to dispatch the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement. Subject to the Operating Restrictions, each Dispatch Notice will be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer, or Buyer's SC. If an electronic submittal is not possible for reasons beyond Buyer's control, Dispatch Notices may be provided (in order of preference) telephonically or by electronic mail to Seller's personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth

or referred to in this Agreement, all Dispatch Notices will be made in accordance with Market Notice Timelines as specified in the CAISO Tariff.

4.12 Compliance with New Resource Implementation. Seller shall, at its sole cost and expense (a) design and thereafter at all times maintain the Facility in compliance with the New Resource Implementation requirements (or the equivalent), and (b) include in the design, construction, and operation of the Facility any equipment or software that may be required to enable the Facility to participate in the EIM (or its equivalent) and the EDAM. Seller shall cooperate with Buyer in connection with any such registration of the Facility into the EIM and EDAM as directed by Buyer, including promptly providing necessary information, data, and documentation for the registration.

ARTICLE 5
TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other Party for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days upon the request of Seller to evidence such exemption or exclusion.

5.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without the Party's consent and receiving due compensation therefor from the other Party.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and Seller shall comply with applicable Law and Prudent Operating Practices relating to the operation, maintenance, disposal of the Facility and Facility equipment, as well as the generation and sale of Product.

6.2 Maintenance of Health and Safety. Seller shall take reasonable safety precautions and comply with Prudent Operating Practices with respect to the operation, maintenance, repair

and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations under this Agreement, including maintaining Shared Facility capacity not less than the Dedicated Interconnection Capacity for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs, and (iv) provide that in the event of any curtailment that is not specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

7.1 Metering. Unless the Parties agree otherwise pursuant to Section 3.12, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter and track all Station Use and all Auxiliary Use. All meters shall be CAISO Approved Meters and operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses, and Station Use (as applicable), from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit W. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling

Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web interface and/or directly from the CAISO meter(s) at the Facility.

7.2 Meter Verification. Seller shall, at no expense to Buyer, test the Facility Meter at least annually and more frequently than annually if Buyer or Seller believes there may be a meter malfunction. Any request for a meter test by Buyer, or Seller-initiated meter test, shall be scheduled promptly by Seller. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified at least seven (7) days in advance of such tests and have a right to be present during such tests. If a Facility Meter is inaccurate, it shall be promptly repaired or replaced. Seller shall be responsible for any costs or liabilities due to meter inaccuracy. Seller shall promptly pay Buyer for any overpayment amounts due to the inaccuracy for the period of the inaccuracy, such adjustment to be made by Buyer or Buyer's Scheduling Coordinator. If it is not known when the Facility Meter inaccuracy commenced (if such evidence exists, such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 Invoicing. Seller shall deliver an invoice to Buyer for delivered Product no later than the tenth (10^{th}) day of each month for the previous calendar month (including the name of the Facility, Seller's address, and the contact information for the preparer). Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product, including Renewable Energy Credits, delivered by the Facility for any Settlement Period during the preceding month, including the amount of Generating Facility Energy, Charging Energy, Discharging Energy, Station Use, Auxiliary Use for which Seller owes reimbursement to Buyer, Replacement RA, Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit A, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; (b) include any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount, as well as the corresponding Green Attribute attestation at Exhibit E; and (c) be in a format and contain additional content specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. At any time, if Seller is providing an invoice delivered physically through the mail, Buyer may request that the invoice shall be delivered by electronic mail in accordance with Exhibit D. Buyer may elect to invoice Seller for amounts owed to Buyer under this Agreement, while preserving Buyer's rights to recover (and Seller's obligation to pay) amounts owed in any other manner permitted under the Agreement. At least sixty (60) days prior to the expected date of the startup and testing of the Facility, Seller shall provide to Buyer for its review and approval a final form of monthly invoice to be used hereunder by Seller and shall reasonably cooperate with Buyer to finalize such form, as may be reasonably updated or modified upon consent of the Parties during the Contract Term.

8.2 Payment. Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by no later than sixty (60) days after Buyer's receipt of the invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance that is undisputed. Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the applicable monthly billing periods except with respect to any disputed amounts under Section 8.5. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the lesser of: (i) an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%); or (ii) the maximum rate permitted by applicable requirements of Law (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Seller and its direct subcontractors shall maintain all books and records pertaining to the performance and management of this Agreement, including related to metering, costs, Green Attributes, billing, and payments, and all invoices under this Agreement, for a period of at least four (4) years from the final payment following termination under this Agreement, or longer if required by Law. Upon fourteen (14) days' Notice to Seller, Buyer and the Authorized Auditors shall be granted access to the accounting books and records within the possession or control of Seller, Seller's direct subcontractors, or Seller's Affiliates at reasonable times and without charge pertaining to all books and records pertaining to the performance and management of this Agreement or otherwise generated pursuant to this Agreement. Buyer and the Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe, and the like, and such books and records. Examinations and audits by the Authorized Auditor will be performed using generally accepted auditing practices, principles, and applicable Governmental Authority audit standards. If the 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 Auditor arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within thirty (30) days of notice to Seller of such costs and expenses.

8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if: (a) Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5; (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO or WREGIS; or (c) there is determined to have been a meter inaccuracy sufficient to require a payment adjustment; *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the initial billing period. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. If the required adjustment is in favor of Buyer, the due payment shall bear interest at the Interest Rate

until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due; *provided, however*, Buyer may request that Seller provide a revised invoice specific to the undisputed portion, with the due date tolling from the date of delivery of the revised invoice. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved; *provided, however*, Buyer may draw on the Performance Security to satisfy any payment obligations from Seller to Buyer under this Agreement during the pendency of the dispute. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. If an invoice is not rendered within six (6) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 Netting of Payments. The Parties hereby agree that Buyer shall have the right to discharge debts and payment obligations due and owing from Seller to Buyer on the same date through netting, in which case all amounts owed by Buyer to Seller for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits G and J, interest, and payments or credits, shall be netted so that only any excess amount remaining due to Seller shall be paid by Buyer.

8.7 Seller's Development Security. To guarantee its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) days after the Effective Date. Seller shall maintain the Development Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any Seller obligation or any other reason permitted under this Agreement. Upon the earlier of (a) five (5) Business Days after Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement provided all Seller's obligations are satisfied, including that any damages owed by Seller are paid in full, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the issuer of the Letter of Credit for the Development Security (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, (iii) fails to renew the Letter of Credit within sixty (60) days of expiration, or (iv) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have three (3) Business Days to deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 Seller's Performance Security. To guarantee its obligations under this

Agreement, Seller shall deliver Performance Security to Buyer before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for Seller obligation or any other reason permitted under this Agreement. Following a termination where all Seller's obligations are satisfied, including that any damages owed by Seller are paid in full, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the issuer of the Letter of Credit for the Performance Security (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, (iii) fails to renew the Letter of Credit within sixty (60) days of expiration, or (iv) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have three (3) Business Days to deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

Upon or any time after (i) the occurrence of an Event of Default caused by Seller, (ii) an Early Termination Date resulting from an Event of Default caused by Seller, (iii) Seller fails to timely pay Buyer any amount due hereunder, including the Termination Payment, (iv) sixty (60) or fewer days remain prior to the expiration of such Letter of Credit and a substitute Letter of Credit has not been provided, (v) any substitute Letter of Credit is not provided as required under this Agreement, including with respect to Section 11.1(b), or (vi) an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

8.10 No Liens. Except as otherwise expressly permitted by this Agreement, the Facility shall be owned by Seller during the Contract 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 written approval of Buyer.

ARTICLE 9
NOTICES

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

9.2 Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 Definition.

(a) "**Force Majeure Event**" means any act of God that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of due diligence could not be reasonably be anticipated as of the Effective Date of this Agreement and cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of the claiming Party; *provided*, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party's fault or negligence contributed thereto in scope or duration.

(b) Without limiting the generality of the foregoing, so long as the following events qualify under Section 10.1(a), a Force Majeure Event could potentially include an act of God, such as certain flooding, lightning, hurricanes, tornadoes, or ice storms.

(i) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event; (ix) the COVID-19 pandemic or the effects or impacts of the COVID-19 pandemic; or (x) Seller's inability to achieve Construction Start of the Facility by the Guaranteed Construction Start Date or achieve Commercial Operation by the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit J, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. It is understood by the Parties that the foregoing provisions shall not excuse any obligations of Seller with respect to Energy Replacement Damages and Replacement Product, whether or not caused by Force Majeure. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder; *provided that* Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event.

10.3 Notice. In order to claim a Force Majeure Event, the claiming Party must, (a) within fourteen (14) days after the initial occurrence of the claimed Force Majeure Event, give the other

Party Notice describing the particulars of the occurrence, (b) provide, within fourteen (14) days after the initial occurrence of the claimed Force Majeure Event, evidence reasonably acceptable to the other Party to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) provide Notice to the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. Failure to provide timely notice and evidence as described in the prior sentence constitutes a waiver of the Force Majeure Event.

10.4 Termination Following Force Majeure Event.

(a) If a Force Majeure Event has occurred prior to the Commercial Operation Date, and the cumulative extensions that may be granted under the Development Cure Period equal one hundred and eighty (180) days, and one or more delays due to a Force Majeure Event are continuing, then Buyer shall either: (i) direct Seller to pay Commercial Operation Delay Damages for the period set forth in Exhibit J until the Development Security is exhausted, and then terminate this Agreement upon such exhaustion; or (ii) terminate this Agreement upon written Notice of termination and collect from Seller a payment of liquidated damages in the amount of the Development Security, minus any aggregate Delay Damages previously paid by Seller, which, at Buyer's election, may either be paid directly to Buyer with the Notice of termination or drawn from the Development Security. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) as well as any outstanding payment obligations of Seller (including those payment obligations in this Section 10.4(a)).

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

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within thirty (30) days after Notice thereof;

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit J and/or a Development Cure Period pursuant to Section 4 of Exhibit J, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit J and/or a Development Cure Period pursuant to Section 4 of Exhibit J;

(iii) if, for any Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit T) for such period is not at least fifty percent (50%) of the Expected Energy amount in such Contract Year;

(iv) if, for any two Contract Years, the Adjusted Energy Production amount (calculated in accordance with Exhibit T) for such period is not at least sixty-five percent (65%) of the Expected Energy amount in each Contract Year;

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the expected energy amount for that Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(vi) if, for any Contract Year, the average Monthly Storage Capacity Availability is not at least seventy-five percent (75%) for such period;

(vii) if, for any Contract Year, the average Efficiency Rate is not at least seventy-five percent (75%) for such period;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to timely replenish the Development Security or Performance Security amounts in accordance with this Agreement in the event Buyer draws against it;

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

(A) the issuer of the outstanding Letter of Credit shall fail to meet the criteria in the Letter(s) of Credit definition, including maintaining a Credit Rating of at least A by S&P or A2 by Moody's;

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

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

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

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

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

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

(H) The Letter of Credit from a United States branch of a foreign bank (a) has, or is required by a Foreign Government to have, a contractual term by which it is subject to the write-down or conversion tools or powers (commonly known as "bail-in") of any Foreign Government, (b) is or becomes an obligation of the issuer subject to the write-down or conversion tools or powers of any Foreign Government, irrespective of whether it has or is required to have a contractual term so providing, or (c) is treated by a Federal Financial Regulator or a Foreign Government as an obligation of the issuer in the nature of a "covered debt instrument" within the meaning of 12 C.F.R. §324.2.

(x) the failure by Seller to timely achieve CEC Certification and Verification in accordance with Section 3.8;

(xi) the failure by Seller to maintain and provide acceptable evidence of insurance as set forth in Article 17 that is not cured within three (3) days after receipt of Notice of such failure by Buyer;

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

(xiii) for failure of the Minimum Dischargeable Energy Performance Guarantee if: (A) any such failure continues for a period of six (6) consecutive months following the last day of the first non-compliant month, or (B) the total number of non- compliant months for such guarantee is equal to twelve (12) or more at any time during the Delivery Term;

(xiv) if the Storage Facility or Facility metered output deviates from the ADS and such failure continues for a period of sixty (60) consecutive days;

(xv) if the Facility cannot fully respond to ADS and AGC signals over a period of sixty (60) consecutive days;

(xvi) if a WREGIS Certificate Deficit is not cured within six (6) months of the commencement of a WREGIS Certificate Deficit; or

(xvii) if FCDS is lost for the Facility and not regained within a period of ninety (90) days.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have all the following rights, without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that

terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date; provided, upon any occurrence of any Event of Default of the type described in Section 11.1(a)(iv), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date has been declared immediately prior to such event;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages the Termination Payment calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance;

(e) if Buyer, to apply the Development Security or Performance Security to any amounts owed by Seller; and

(f) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement.

11.3 Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment in accordance with this Section 11.3. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction ("**Termination Payment**") shall be the aggregate of the Settlement Amount plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

11.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment due to the Non-Defaulting Party. The Non-Defaulting Party shall not be obligated to pay a Termination Payment to the Defaulting Party under any circumstance. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment, as applicable, shall be made to the Non-Defaulting Party within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such Early Termination Date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to or better for Buyer than the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Following any failure to accept by Buyer, Seller shall not offer the Product to a third party on terms better for a buyer without first offering such terms to Buyer for a period of two (2) years following such Early Termination Date.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages or other remedies are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, OR (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, IN NO EVENT SHALL EITHER PARTY OR, IN THE CASE OF BUYER, ITS INDEMNITEES, BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT, CONTRACT, OR ANY OTHER LIABILITY AT LAW OR IN EQUITY.

12.2 Liquidated Damages. 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.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

(f) Seller will be responsible for obtaining and maintaining any permits necessary to construct, operate, and maintain the Facility and Seller will be the applicant on any CEQA documents.

(g) Seller shall remain at all times throughout the Contract Term a Special Purpose Entity and shall comply with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion.

(h) Seller shall maintain Site Control throughout the Contract Term.

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

(a) Buyer is a joint powers authority, duly organized, and validly existing under the laws of the State of California.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse impact on Buyer's performance under this Agreement.

(c) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditor's rights generally and subject, as to enforceability, to the general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against public entities in the State of California.

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

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 Additional Covenants of Seller.

(a) Seller represents, warrants, and covenants that it shall not permit Facility Debt in an amount that, in the aggregate exceeds seventy percent (70%) of the Facility Cost. Upon Buyer's request, Seller shall promptly provide Buyer with a certification from an officer, director, or member of Seller attesting that such ratio of Facility Debt to Facility Cost has not been exceeded.

(b) Seller represents, warrants, and covenants that it will obtain and maintain all Permits necessary to construct and operate the Facility, as well as fully perform its obligations under this Agreement.

(c) Seller represents, warrants, and covenants that it has not and will not knowingly utilize, and will conduct due diligence to avoid, equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). Seller shall comply with all applicable laws regarding Forced Labor restrictions, including the Uyghur Forced Labor Prevention Act.

(d) Seller represents, warrants, and covenants that the organizational structure and ownership of Seller and Upstream Equity Owner, including a list of each of such entity's Principals, is as set forth in Exhibit R. Exhibit R may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

13.5 Construction Workforce. Seller shall use commercially reasonable and diligent efforts to site, develop, finance, and construct the Facility. Prior to the Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 13.5.

ARTICLE 14
ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that adversely affects any of Buyer's rights, benefits, risks, or obligations under this Agreement, or to modify the Agreement, except as expressly set forth below. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, or any other action or review that is at the request of Seller, including without limitation reasonable attorneys' fees.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for the sole purpose of financing exclusively this Facility to any Facility Lender; *provided, however*, that the terms of such financing or refinancing

and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement, including the requirement that the Facility be operated and maintained by a Qualified Operator and that any sale or transfer of any portion of the Facility shall be made to a Qualified Transferee. Seller shall provide Buyer with one hundred twenty (120) days' prior notice of any such collateral assignment or pledge. 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 Product (including the Energy, Capacity Attributes, and Green Attributes). In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit Z ("**Consent to Collateral Assignment**").

14.3 Seller Assignment. Except as set forth in Section 14.2, Seller shall not assign any of its rights, or delegate its obligations, under this Agreement, nor transfer the Facility, Site, or Facility Assets, without the prior written consent of Buyer. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

14.4 Buyer Assignment. Seller agrees that Buyer may at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement in whole or in part without the consent of Seller. Upon any such assignment and delegation of obligations by such an assignee, Buyer shall be relieved of and fully discharged from all its obligations hereunder, whether such obligations arose before or after the date of such assignment and delegation.

ARTICLE 15
DISPUTE RESOLUTION

15.1 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of Law.

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys' fees in connection with said action.

15.4 Venue. All litigation arising out of, or relating this Agreement, shall be brought in a federal or state court located in the County of Los Angeles in the State of California. The Parties hereto agree to and do hereby irrevocably submit to the jurisdiction of such courts in the State of

California, and waive any defense of *forum non conveniens*.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

(a) Seller agrees to indemnify, hold harmless, and (at the option of Buyer) defend, Buyer, Buyer's Participating Members, and all their respective commissioners, officers, agents, employees, advisors, agents, and authorized representatives, and assigns and successors interest (collectively, the "**Indemnitees**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including but not limited to attorneys' fees and allocated costs of internal counsel) against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages (including indirect, consequential, or incidental), demands, judgments, costs, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, in any manner including arising by reason of, or incident to, or connected in any manner with the performance, non-performance or breach of this Agreement, or any other act, error or omission or willful misconduct by or of Seller or Seller's officers, employees, agents, subcontractors of any tier, including for (i) death, bodily injury or personal injury to any person, including Seller's employees and agents, or third persons; (ii) damage or destruction or loss of use to any property of either Party or third persons; (iii) claims associated with any Environmental Costs; (iv) any failure of a representation, warranty or guarantee of Seller hereunder to be true in all material respects; (v) the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of the Seller's officers, agents, employees, or Subcontractors of any tier; (vi) claims resulting from Seller's breach, performance or non-performance of its obligations and indemnity responsibilities under this Agreement, including relating to CPRA matters; and (vii) any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility.

(b) Buyer shall not be indemnified for its damages caused by its sole gross negligence or willful misconduct. These indemnity provisions shall not be construed to relieve any Seller insurer of its obligation to pay claims from the Indemnitees consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by Buyer of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Buyer shall notify the Seller in writing of such fact. Seller shall (at the option of Buyer consistent with Section 16.1) assume the defense thereof with counsel designated by the Seller and satisfactory to the Indemnitees, *provided*, if the defendants in any such action include both the Indemnitees and Seller and the Indemnitees shall have reasonably concluded that there may be legal defenses or actions available to it which are different from or additional to, or inconsistent with, those available to Seller, Indemnitees shall have the right to select and be represented by separate counsel, at Seller's expense. If Seller fails to assume the defense of a claim meriting indemnification, the Indemnitees may at the expense of

the Seller contest, settle, or pay such claim. Except as otherwise provided in this Article 16, in the event that Seller is obligated to indemnify and hold the Indemnitees and its successors and assigns harmless under this Section 16.2, the amount owing to the Indemnitees will be the amount of the Indemnitees' damages net of any insurance proceeds received by the Indemnitees following a reasonable effort by the Indemnitees to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 Insurance. Seller shall obtain and maintain the insurance coverages as provided in Exhibit G. No later than five (5) Business Days after the Effective Date, Buyer shall have received all certificates and other documents required to establish that the insurance policies required by Exhibit G are in full force and effect. Acceptable evidence of the insurance required in Exhibit G must be on file with Buyer's risk management agent and must be maintained as current and in force in order to receive payment under this Agreement.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes confidential information, except as required by applicable law: all documents, data, 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, information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other (the "**Confidential Information**"). Notwithstanding the foregoing, Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; (iv) information Buyer or Participating Members release in connection with their respective policies or Law, including the release of this Agreement and supporting information to receive an approval or authorization from their respective governing bodies; and (v) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party, however, either Party may without violating this Article 18, disclose Confidential Information to:

(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 Authorities 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;

(ii) to Governmental Authorities or the public as required by any applicable 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;

(iii) to WREGIS in accordance with WREGIS Operating Rules; and

(iv) with respect to Buyer, to any of its respective members from time to time, including in a public distribution of the agenda of Buyer or any Participating Member.

The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from making the entire contents of this Agreement available to the public in connection with the policies of Buyer or Buyer's Participating Members or the requirements of any Law, including in connection with the process of receiving approval from the governing body of Buyer or Buyer's Participating Members.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.) ("**CPRA**") and the Ralph M. Brown Act (Government Code Section 54960 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information, Buyer will use reasonable efforts to notify Seller in writing via email that such request has been made and its intent to disclose the documents. Buyer will comply with the disclosure requirements of the CPRA, including with respect to the release of 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 Indemnitees from and against all suits, claims, and causes of action brought against Buyer or Indemnitees' 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 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 Indemnitees, through and including any appellate proceedings. Seller's obligations to 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 Indemnitees, as well as all damages or liability of any nature. Seller shall be solely responsible

for taking at its sole expense whatever legal steps are necessary to prevent release of the Confidential Information to the third party by Buyer.

ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

19.3 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Except to the extent this Agreement expressly provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies under this Agreement or now or hereafter existing in law or equity or otherwise, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

19.4 No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers, employees, or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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

19.6 Mobile-Sierra. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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 at 550-51 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Comm'n,* 558 U.S. 165 (2010).

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

19.8 Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent provided under applicable law, including California's Uniform Electronic Transactions Act

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

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

19.11 Further Assurances. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those

provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

[SELLER]	SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

COMPENSATION

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

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, up to one hundred five percent (105%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 105%. If at any point in any Contract Year, the amount of Generating Facility Energy plus Deemed Delivered Energy in excess of the Curtailment Cap exceeds one hundred five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Generating Facility Energy and/or Deemed Delivered Energy shall be $0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Generating Facility Energy in excess of the product of the Guaranteed Generating Facility Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment as follows:

Monthly Capacity Payment = (Storage Rate x Effective Storage Capacity x Efficiency Rate Factor x Monthly Availability Factor) - (Auxiliary Period Amount).

Such Monthly Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

"Storage Rate" has the meaning on the Cover Sheet.

"Effective Storage Capacity" has the meaning in the definitions of this Agreement. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

"Efficiency Rate Factor" means:

(A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

Efficiency Rate Factor = 100%

(B) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, then:

Efficiency Rate Factor = 0

"**Monthly Availability Factor**" means:

(A) If the Monthly Storage Capacity Availability is greater than or equal to the Guaranteed Storage Capacity Availability, then:

Monthly Availability Factor = 100%

(B) If the Monthly Storage Capacity Availability is less than the Guaranteed Storage Capacity Availability, then:

Monthly Availability Factor = 0

"**Auxiliary Period Amount**" means an amount equal to the product of: (i) the total number of MWhs of Auxiliary Use times the greater of (a) the Renewable Rate; or (b) the monthly average cost of Charging Energy; times a percentage equal to 100 plus (1 minus the Efficiency Rate) (which functions to compensate Buyer for conversion losses due to the Efficiency Rate). As exemplified by the following formula:

Auxiliary Period Amount = Auxiliary Use (in MWh) x (greater of Renewable Rate or monthly average cost of Charging Energy) x (100 + (1- Efficiency Rate))

(e) Test Energy. Test Energy is compensated in accordance with Section 3.5.

(f) Tax Credits. The Parties agree that neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, Renewable Energy Incentives, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT B

FACILITY DESCRIPTION

1.	Name of Facility:	[Solar photovoltaic powered electric generating facility, known as the "XXXXX"]
2.	Facility Site:	[XXXX (include APNs, Site Address)] The Facility site is located at Latitude: [XX]°; Longitude: [XX]°.
3.	Generator Owner:	[XXXXX, LLC]
4.	Generator Operator:	[XXXXX, LLC, or a Qualified Operator]
5.	Transmission Provider:	[XXX]
6.	Facility:	
	(a) Type of Generating Facility:	[Photovoltaic solar generation]
	(b) Type of Storage Facility:	[Lithium-ion battery storage]
	(c) Facility Description:	[]
	(d) Delivery Point:	[]
	(e) P-node:	[]
	(f) Balancing Authority Area:	[]
7.	Additional Information:	N/A

EXHIBIT C

PERMITS

Agency/Office	Permit, Clearance, Approval, or Authorization	Permit Trigger

EXHIBIT D

NOTICES

1. Correspondence pursuant to Section 9.1 shall be transmitted to the following addresses:

1.1 If to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Executive Director
Email: projects@scppa.org

With a copy to:

[]

1.2 If to Seller:

[Seller name]

Address:

[Attention: Asset Management]

2. Billings and invoices pursuant to Section 8.1 shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting
Email: projectinvoices@scppa.org
and to: projects@scppa.org

With a copy to:

[]

2.2 If Payment to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting, projectinvoices@scppa.org

With a copy to:

[]

2.3 If Billing to Seller:

[Seller information]

2.4 If Payment to Seller:

[Seller information]

3. Throughout the Delivery Term, all notices related to scheduling, forecasts, availability, real-time access to data, or a failure related to the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Attention: Director of Asset Management
Email: projects@scppa.org

With a copy to:

[]

If to Seller:

[Seller information]

EXHIBIT E

FORM OF GREEN ATTRIBUTE ATTESTATION

(Seller) **Green Attribute Attestation and Bill of Sale**

[], LLC ("Seller") hereby sells, transfers and delivers to Southern California Public Power Authority ("Buyer") the Green Attributes associated with the generation from the Facility described below, and also confirms that Seller has uploaded the WREGIS certificates as shown below:

Facility Name:	
Generation Type:	
GPS Coordinates:	
Capacity (MW):	
Commercial Operation Date:	
CEC Reg. No	
EIA ID No.	
QF ID No.	

Period (month-year)	**Renewable Energy Credits (in MWh)**	**WREGIS Withhold Enforced? (yes/no)**	**Withhold Amount**	**Withhold Released to Seller? (yes/no)**
Jan-YY				
Feb-YY				
Mar-YY				
Apr-YY				
May-YY				
Jun-YY				
Jul-YY				

Aug-YY				
Sep-YY				
Oct-YY				
Nov-YY				
Dec-YY				
Total for YYYY				

Unreleased Withholding ($) Year-to-Date: _____

Gross Energy Generated (MWh) Year-to-Date: _____

Renewable Energy Credits Delivered (MWh) Year-to-Date: _____

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 Green Attributes referenced herein;

iii) the Facility generated and delivered to the grid the Energy in the amount indicated; and

iv) Seller owns the Facility, and each of the Green Attributes 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, confirming the transfer from Seller to Buyer all of Seller's right, title and interest in and to the Green Attributes associated with the generation of the Energy for delivery to the grid.

Contact Person/telephone: _____

EXHIBIT F

FORM OF LETTER OF CREDIT

DATE:

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

BENEFICIARY: Southern California Public Power Authority 1160 Nicole Court Glendora, California 91740 Telephone: (626) 793-9364 Facsimile: (626) 793-9461	APPLICANT:
ADVISING BANK:	AMOUNT: USD (FIGURES) (AMOUNT IN WORDS)
EXPIRATION DATE: AT COUNTER OF ISSUING BANK	

Ladies and Gentlemen:

We hereby issue our Irrevocable Unconditional Standby Letter of Credit **("Letter *of Credit")*** in favor of Beneficiary by order and for the account of Applicant, and on behalf of [Seller], which is available at sight for USD $[XX,XXX,XXX] by sight payment:

(a) upon presentation to us at our office at [*insert address*], of: (i) Beneficiary's written demand for payment containing the text of Exhibit I and (ii) Beneficiary's signed statement containing the text of Exhibit II (collectively, the "***Documents***"); or

(b) upon Beneficiary's telephone or fax advice of demand to the attention of transaction services at [telephone and/or fax number] and presentation to us by fax or email to [fax or email address] of the Documents.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us of your Documents in conformity with the foregoing, on the next Business Day after such presentation (unless such presentation occurs after 1:00 p.m. Pacific Prevailing Time on the day of such presentation, in which event payment will be made on the second Business Day), but without any other delay whatsoever, irrevocably and without reserve or condition, we will make payment to your order in the account at the bank designated by you in the demand in immediately available funds. "Business Day" means a day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized or required by law to close.

Provided that the presentation of 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 Applicant or any other person except Beneficiary, 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 valid written order issued by a court of competent jurisdiction that is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of 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 referred to above with care so as to ascertain that on their face they appear to comply with the terms of this Letter of Credit, and that if such demand(s) and Documents on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

The stated amount of this Letter of Credit may be increased or decreased, and the Expiration Date of this Letter of Credit may be extended, by an amendment to this Letter of Credit and as otherwise provided in this Letter of Credit. Any such amendment shall become effective only upon

acceptance by your signature on a hard copy amendment. The Expiration Date shall also be amended as provided in the following paragraph.

This Letter of Credit shall expire on the earliest to occur of (1) the Expiration Date or (2) our receipt of written confirmation from Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit. This Letter of Credit shall automatically renew, without amendment, for a term of one (1) year (and the Expiration Date shall automatically be extended for such period) upon the Expiration Date unless we provide Beneficiary with a written notice of non-renewal (each such notice a "Notice of Non-Renewal") in a customary form on our letterhead, by overnight courier, at least one hundred twenty (120) days prior to the then existing Expiration Date. To the extent a Notice of Non-Renewal has been provided to Beneficiary in accordance herewith, Beneficiary is authorized to draw on us up to the stated amount of this Letter of Credit, by presentation to us, in the manner specified herein of the Documents.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740 with a copy via email to projects@scppa.org. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid.

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

If this Letter of Credit expires during an interruption of business as described in Article 36 of the Uniform Customs & Practice for Documentary Credits 600, we hereby specifically agree to effect payment if this credit is drawn against within thirty (30) days after the resumption of business.

We hereby engage with Beneficiary that Beneficiary's 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 Applicant. All of the rights of Beneficiary set forth above shall inure to the benefit of its successors by operation of law. In this connection, in the event of a drawing made by a party other than Beneficiary, such drawing must be accompanied by the following signed certification:

"The undersigned does hereby certify that _[drawer]_ is the successor by operation of law to Southern California Public Power Authority, the Beneficiary named in [name of banks] Letter of Credit No. _____ ."

THIS LETTER OF CREDIT IS TRANSFERABLE IN FULL, BUT NOT IN PART BY BENEFICIARY, AND MAY BE TRANSFERRED SUCCESSIVELY. WE SHALL NOT RECOGNIZE ANY TRANSFER OF THIS CREDIT UNTIL A TRANSFER APPLICATION IN THE FORM OF EXHIBIT III ATTACHED HERETO IS FILED WITH US, AND OUR TRANSFER CHARGES HAVE BEEN PAID BY THE APPLICANT. OUR TRANSFER FEE IS [____]. THE ORIGINAL LETTER OF CREDIT AND ANY ORIGINAL AMENDMENTS MUST ACCOMPANY THE TRANSFER APPLICATION. THE SIGNATURE AND THE TITLE OF THE PERSON SIGNING THE TRANSFER APPLICATION MUST BE VERIFIED BY YOUR BANK OR NOTARIZED BY A NOTARY PUBLIC.

Except so far as otherwise expressly stated herein, this Letter of Credit is governed by International

Standby Practices 98 ("ISP98"). As to matters not governed by ISP98, 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 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.

Please send all claims and drawings as per the terms and conditions herein to the following address:

[_____]

For queries, if any, contact our client services team at: [_____] or [_____]

_____	_____
[_____]	[_____]
AUTHORIZED SIGNATURE	AUTHORIZED SIGNATURE

Exhibit I
to Form of Letter of Credit

DEMAND FOR PAYMENT

TO: [_____]
[_____]

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. _____ Dated _____, 20__

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 Applicant.

DATED: _____ , 20 __

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

Exhibit II
to Form of Letter of Credit

STATEMENT

TO: [_____]
[_____]

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. _____ Dated _____, 20__

To Whom It May Concern:

Reference is hereby made to your Irrevocable and Unconditional, Standby Letter of Credit No. [_____] dated [_____] in the amount of $ [_____] established by you in our favor for the account of _____., on behalf of [Seller].

We hereby certify to you that $_____is payable to us [as provided in our agreement with [Seller] and that we are entitled to draw on this Irrevocable and Unconditional, Standby Letter of Credit No. [_____] pursuant to the terms of such agreement.] [because you have provided us a Notice of Non-Renewal.]

DATED: _____ , 20 __

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

Exhibit III
to Form of Letter of Credit

APPLICATION TO TRANSFER A STANDBY CREDIT

DATE: _____

TO
[_____]
[_____]

STANDBY LETTER OF CREDIT REFERENCE NO. _____

LADIES AND GENTLEMEN,

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

_____
(NAME OF TRANSFEREE)

_____
(ADDRESS)

REASON FOR TRANSFER OF STANDBY LETTER OF CREDIT: _____

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE STANDBY LETTER OF CREDIT IN ITS ENTIRETY.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH STANDBY LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS, OR OTHER AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE.

ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF CONSENT OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH STANDBY LETTER OF CREDIT IS RETURNED HEREWITH AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

AUTHORIZED SIGNATORIES

NAME OF BENEFICIARY: _____

BY: _____

PRINT NAME:_____

TITLE: _____

TELEPHONE NUMBER: _____ E-MAIL ADDRESS: _____

THE ABOVE SIGNATURE, WITH TITLE AS STATED, CONFORMS TO THAT ON FILE WITH US, AND IS AUTHORIZED FOR THE EXECUTION OF THIS DOCUMENT.

NAME OF BANK/ NOTARY: _____

BANK / NOTARY ADDRESS: _____

_____

BY: _____
AUTHORIZED SIGNATURE

NAME: _____

TITLE: _____
TELEPHONE NUMBER: _____ E-MAIL ADDRESS: _____

Exhibit IV
to Form of Letter of Credit

SURRENDER

Re: Irrevocable and Unconditional Documentary Letter of Credit

No._____Dated_____, 20

_____
_____
_____
_____
_____

Notice of Surrender of Letter of Credit

Date: _____

Attention: Letter of Credit Department

To Whom It May Concern:

Reference is made to your above-mentioned Irrevocable and Unconditional Documentary 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.

Southern California Public Power Authority

By _____

Title _____

EXHIBIT G

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 reasonably acceptable to Buyer's Risk Management Section (LADWP Risk Management Section). 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.

Said evidence of insurance shall contain a provision that the policy cannot 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 Buyer, with a copy to Buyer's Risk Manager addressed or emailed as follows: Department of Water and Power of the City of Los Angeles, Attention: Risk Management, Room 465, 111 North Hope Street, Los Angeles, CA 90012. Email: RiskManagement@ladwp.com.

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 a retroactive date or extended discovery period back to the policy in effect as of the Effective Date with the same limits, terms and conditions of the expiring policy.

Buyer reserves the right to request at any time during the term or during any extension of this Agreement, applying generally accepted risk management principles, to adjust the amounts and/or types of insurance required hereunder to ensure such coverage remains adequate and relevant throughout the term and any extension of this Agreement, which Seller shall take commercially reasonable efforts to obtain. Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which Buyer may immediately terminate or suspend the Agreement.

Seller shall be responsible for all subcontractors' compliance with the insurance requirements with limits applicable to the scope of work/services being performed and in accordance with Seller's standard agreements with such subcontractors.

In the event that any insurance (including the limits or deductibles thereof) described in Section II, other than insurance required by law to be maintained, is not available on commercially reasonable terms in the global commercial insurance market, Buyer shall not unreasonably withhold its agreement to modify Seller's obligation to obtain such insurance to the extent of such unavailability; *provided*, *however*, that as a condition of agreeing to such modification, (i) Seller shall first request any such modification in writing, which request shall be accompanied by written

reports prepared by Seller and its insurance broker, in a form reasonably acceptable to Buyer, certifying that such insurance is not available on commercially reasonable terms in the global commercial insurance market for similar facilities (and, in any case where the required amount is not so available, certifying as to the maximum amount which is available), and explaining in detail the basis for such conclusions; (ii) at any time after the granting of such modification (but no more frequently than once per year unless Buyer has reason to believe, in good faith, that the applicable insurance has become available on commercially reasonable terms), Buyer may reasonably request supplemental reports updating the reports and reaffirming the certifications described in (i), and Seller shall, within sixty (60) days after such reasonable request, provide to Buyer such supplemental reports in a form reasonably acceptable to Buyer; and (iii) any such modification shall be effective only so long as such insurance shall not be available on commercially reasonable terms in the global commercial insurance market (including re-insurers and specialty markets) and Seller shall promptly notify Buyer if such insurance becomes available, it being understood that the failure of Seller to timely furnish any supplemental report described in (ii) shall be considered conclusive evidence that such modification is no longer effective because such condition no longer exists.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance, which shall include coverage for liability arising out of the use of owned, non-owned and hired vehicles for performance of the work as required to be licensed under the California Vehicle Code, or the vehicle code of any other applicable state. The Commercial Automobile Liability insurance shall have not less than one million dollars ($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, Buyer's Members, and their officers, agents, and employees as additional insureds with Seller and shall insure against liability for death, bodily injury or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be an Acord certificate of insurance including any required scheduled endorsements, or a Buyer Additional Insured Endorsement form or other equivalent written evidence of insurance (i.e., self-insurance) acceptable to Buyer's Risk Management Section.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Liability for Bodily Injury and 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 twenty-five million dollars ($25,000,000.00) combined single limit per occurrence. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be an Acord certificate of insurance along with any required scheduled endorsements, or on Buyer's Additional Insured Endorsement form or equivalent or on an endorsement

to the policy acceptable to Buyer's Risk Management Section and shall provide for the following:

1. Include Buyer, Buyer's Members, and their officers, agents, and employees as additional insureds for the activities and operations under this Agreement.

2. Include 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. Include a description of the coverage included under the policy.

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage with "follow form" to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and identify the underlying policies as provided for Buyer on the Acord or Buyer Additional Insured Endorsement Form, or equivalent, or on an endorsement to the policy acceptable to Buyer's Risk Management Section. An excess liability blanket additional insured endorsement shall be deemed acceptable to Buyer's Risk Management Section, provided, such policy shall include, as appropriate, follow form coverage for Commercial General Liability, Hired & Non-Owned Commercial Automobile 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 of the Agreement is to be performed and including Employer's Liability insurance, where possible, and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than one million dollars ($1,000,000.00) for each accident or illness and shall be a separate policy if not included with Workers' Compensation coverage. Umbrella or Excess Liability coverage may be used to supplement primary coverage to meet the required limits. 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 and Seller shall obtain replacement commercial coverage prior to expiration of the self insurance.

E. Builders' Risk

Builder's Risk insurance shall be of the "all risk" type, shall be written in full replacement value and shall protect the Seller and Buyer against risks of damage to buildings, structures and materials and equipment whether on site or in transit from any location worldwide. The amount of such insurance shall be not less than the insurable value of the work at completion. Buyer shall be named an additional insured on the policy. The Builder's Risk

insurance shall provide for losses to be payable to Seller and the aforementioned named additional insured, as their interests may appear, unless required otherwise by a Facility Lender. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Buyer. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any cause, including testing, ensuing loss, commissioning, and a sub-limit for earthquake and flood acceptable to Buyer's Risk Manager. Seller shall maintain such Builder's Risk insurance policy in full force and effect from the earlier of the Construction Commencement Milestone and the date of commencement of construction of the Facility through the Commercial Operation Date. Evidence of this coverage shall be provided by Seller to Buyer by the earlier of the Construction Commencement Milestone and the date of commencement of construction of the Facility.

F. Property All Risk Insurance

Seller shall procure and maintain or cause to be procured and maintained an All Risk Physical Damage policy to insure the full replacement value of the property located at the Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials or faulty design. This policy need not be in full force and effect until the date of expiration of the Builder's Risk policy described in Paragraph II.E. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builders' Risk policy in Paragraph II.E.

G. Cyber Security Insurance

Seller shall procure and maintain cyber liability and financial loss, intellectual property infringement, network privacy and data protection liability insurance. Seller shall procure and maintain coverage for cyber liabilities and financial loss resulting or arising from acts, errors, or omissions, in connection with data maintenance, hosting, software development and other information technology services incident to this Agreement by Seller, Seller contractors, or vendors. Coverage shall include protection for liability arising from:

1. intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets);

2. breaches of security;

3. violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; and

4. data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial-of-service attack on a third party.

The minimum limits shall be three million dollars ($3,000,000) for each claim and in the aggregate.

H. Pollution Liability Insurance

Seller shall procure and maintain for the duration of the Agreement Term Third Party Pollution Liability insurance that provides coverage for liability caused by pollution conditions arising out of the operations of the Facility. Coverage must be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Coverage may be satisfied through a standalone third party pollution liability policy or via endorsement under the Commercial General Liability policy.

The policy limit must provide coverage of no less than five million dollars ($5,000,000) per occurrence and in the aggregate. Coverage must apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically incurred; cleanup costs; and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

Buyer, Buyer's Members, their officers, agents, employees, and representatives must be added to the policy as additional insureds by endorsement.

The insurance requirements must address all of the foregoing without limitation if caused by an employee of the Seller or an independent contractor working on behalf of the Seller in performing services under this Agreement. The insurance policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. The policy must be kept in force during the life of the Agreement and conform to the survivability and indemnification provisions in the Agreement.

CONTRACT INSURANCE REQUIRMENTS -- SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation: _____
Reference/Agreement: PO 47962 - CERTIFICATE ACCEPTABLE (w/scheduled endorsements)
Term of Agreement: _____
Contract Administrator: SCPPA Project
Buyer and Phone Number: _____

- Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated.
- Firm 30 day Notice of Cancellation required.
- All required scheduled endorsements must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

PER OCCURRENCE LIMITS

(✓) WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability: ($1,000,000.00)
- (✓) CA / All States Endorsement
- ( ) Jones Act (Maritime Employment)
- (✓) Waiver of Subrogation
- ( ) Other: _____
- ( ) US L&H (Longshore and Harbor Workers)
- ( ) Outer Continental Shelf
- ( ) Black Lung (Coal Mine Health and Safety)
- ( ) Other: _____

(✓) AUTOMOBILE LIABLITY: ($1,000,000.00)
- (✓) Owned Autos
- (✓) Hired Autos
- ( ) Contractual Liability
- ( ) MCS-90 (US DOT)
- ( ) Waiver of Subrogation
- ( ) Any Auto
- (✓) Non-Owned Auto
- (✓) Additional Insured
- ( ) Trucker's Form
- ( ) Other _____

(✓) GENERAL LIABILITY: ( ) Limit Specific to Project ( ) Per Project Aggregate ($25,000,000.00)
- (✓) Property Damage
- (✓) Premises and Operations
- ( ) Fire Legal Liability
- ( ) Corporal Punishment
- ( ) Watercraft Liability
- (✓) Waiver of Subrogation
- ( ) Marine Contractors Liability
- (✓) Contractual Liability
- (✓) Products/Completed Ops.
- ( ) Garagekeepers Legal Liab.
- ( ) Collapse/Underground
- (✓) Pollution
- ( ) Airport Premises
- (✓) Other: Cyber Liability
- (✓) Personal Injury
- (✓) Independent Contractors
- ( ) Child Abuse/Molestation
- ( ) Explosion Hazard
- (✓) Additional Insured Status
- ( ) Hangarkeepers Legal Liab.
- (✓) Other: Excess/Umbrella Acceptable

(✓) PROFESSIONAL LIABILITY: ($1,000,000.00)
- ( ) Contractual Liability
- ( ) Additional Insured
- ( ) Vicarious Liability Endt.
- ( ) Waiver of Subrogation
- (✓) 3 Year Discovery Tail
- (✓) Other: E & O

( ) AIRCRAFT LIABILITY:
- ( ) Passenger Per Seat Liability
- ( ) Contractual Liability
- ( ) Pollution
- ( ) Additional Insured
- ( ) Hull Waiver of Subrogation
- ( ) Other:

(✓) PROPERTY DAMAGE: ( ) Loss Payable Status (AOIMA) ( )
- ( ) Replacement Value
- (✓) All Risk Form
- (✓) Builder's Risk: $ FULL VALUE
- (✓) Transportation Floater: $ _____
- ( ) Scheduled Locations/Propt.
- ( ) Actual Cash Value
- ( ) Named Perils Form
- ( ) Boiler and Machinery
- (✓) Contractors Equipment: $
- ( ) Other: _____
- ( ) Agreed Amount
- (✓) Earthquake: SUBLIMIT
- (✓) Flood: SUBLIMIT
- ( ) Loss of Rental Income:
- ( ) Other: _____

( ) WATERCRAFT:
- ( ) Protection and Indemnity
- ( ) Waiver of Subrogation
- ( ) Pollution
- ( ) Other: _____
- ( ) Additional Insured
- ( ) Other: _____

(✓) POLLUTION: ($5,000,000.00)
- ( ) Incipient/Long Term
- ( ) Waiver of Subrogation
- ( ) Sudden and Accidental
- ( ) Contractor's Pollution
- (✓)Additional Insured
- ( ) Other:

( ) CRIME: ( ) Joint Loss Payable Status
- ( ) Fidelity Bond
- ( ) Employee Dishonesty
- ( ) Computer Fraud
- ( ) Other:
- ( ) Financial Institution Bond
- ( ) In Transit Coverage
- ( ) Commercial Crime
- ( ) Other:
- ( ) Additional Insured
- ( ) Loss of Monies/Securities
- ( ) Wire Transfer Fraud
- ( ) Forgery/Alteration of Doc

( ) ASBESTOS LIABLITY: ( ) Additional Insured ( )

EXHIBIT H

LIST OF SUBCONTRACTORS

[To be completed by the Parties]

EXHIBIT I

QUALITY ASSURANCE PROGRAM

[To be completed by the Parties]

EXHIBIT J

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   (a) "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and when Seller has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of this Exhibit J and/or a Development Cure Period pursuant to Section 4 of Exhibit J.

   (b) In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Construction Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when Seller has fulfilled to Buyer's reasonable satisfaction (as established by an approval Notice from Buyer) all of the conditions precedent in Section 2.2 of the Agreement, including providing to Buyer the certificate in the form of Exhibit O (the "**COD Certificate**").

   (a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit J and/or a Development Cure Period pursuant to Section 4 of Exhibit J, up to, and not to exceed under any circumstances, the Commercial Operation Deadline.

   (b) Seller shall notify Buyer that it intends to achieve Commercial Operation at least ninety (90) days before the anticipated Commercial Operation Date.

(c) In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), but in any event not to exceed the Commercial Operation Deadline, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended for up to one hundred and eighty (180) days on a day-for-day basis (the "**Development Cure Period**"), but for avoidance of doubt not beyond the COD Deadline, for the duration of any and all delays arising out of the following circumstances to the extent (i) the following circumstances are not the result of Seller's failure to take all prudent and commercially reasonable actions to meet its requirements and deadlines, (ii) such delays could not be mitigated by Seller using commercially reasonable efforts to overcome the delays, (iii) such delays do not run concurrently; and (iv) such delays are the result of a Force Majeure Event.

   Seller shall submit any claim for Development Cure Period delays within (x) three (3) Business Days in the case of (b) or (c) above, and (y) fourteen (14) days after the initial occurrence of the claimed Force Majeure Event in the case of (a) above, in substantially the form set forth in Exhibit W. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) shall not exceed two hundred seventy (270) days (such two hundred and seventy (270) day maximum extension to the Guaranteed Commercial Operation Date provided on the Cover Sheet, the "**Commercial Operation Deadline**"). Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was a result of Seller's failure to take all diligent and commercially reasonable actions to meet its requirements and deadlines or (ii) Seller fails to provide requested documentation as provided below. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Generating Facility Capacity or Guaranteed Storage Capacity**.

(a) *Guaranteed Generating Facility Capacity*. The Installed Generating Facility Capacity shall not exceed the Guaranteed Generating Facility Capacity. If, at Commercial Operation, the Installed Generating Facility Capacity is less than one hundred percent (100%) but greater than ninety-five percent (95%) of the Guaranteed Generating Facility Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Generating Facility Capacity is equal to (but not greater than) the Guaranteed Generating Facility Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit P-1 hereto specifying the new Installed Generating Facility Capacity. If Seller fails to construct the Guaranteed Generating Facility Capacity by such date, Seller shall pay "**Generating Facility Capacity Damages**" to Buyer, in an amount equal to Three Hundred Fifty Thousand Dollars ($350,000) for each MW that the Guaranteed Generating Facility Capacity exceeds the Installed Generating Facility Capacity.

(b) *Guaranteed Storage Capacity*. The Installed Storage Capacity shall not exceed the Guaranteed Storage Capacity. If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) but greater than ninety-five percent (95%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit P-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to Five Hundred Thousand Dollars ($500,000) for each MW at four (4) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Construction Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT K

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Charging Energy, Test Energy, and the Product at the Delivery Point. In exchange for Buyer's Scheduling Coordinator services, Seller shall pay Buyer an annual fee of [$XXX,XXX]. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid and install and maintain functioning SCADA Systems, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and as set forth in Section 4.5(g), Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs (except as otherwise set forth in this Agreement), and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, other payments, and any future program revenues (including imbalance reserve and reliability capacity)), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO costs and penalties (including Imbalance Energy costs) resulting from any deviations from Charging Notices or Discharging Notices, RAR noncompliance, lack of Compliance, failure to operate the Facility in accordance with this Agreement, or otherwise charging or discharging the Facility when not subject to a Charging Notice or Discharging Notice, Test Energy and related Storage Facility

testing, or any failure by Seller to abide by the CAISO Tariff, the terms of this Agreement, or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller, at Seller's cost and liability, to allow Seller to make Resource Adequacy substitutions with respect to such outages as permitted by the CAISO Tariff. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) or any other costs or penalties associated with lack of availability are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute at Seller's cost any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data

Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT L

NON-CONSOLIDATION OPINION

OPINION LETTER

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

Re: Power Purchase Agreement between Southern California Public Power Authority and []

Dear Sir or Madam:

We have acted as counsel to [], a [] limited liability company (the "Company"), in connection with Power Purchase Agreement dated as of _____, 202[] (the "PPA"), by and between the Company, as seller, and Southern California Public Power Authority, a California joint powers agency and public entity ("Buyer"), as buyer. In our capacity as counsel to the Company, we have been asked to render an opinion as to whether, in a case where any upstream equity owner of the Company at any level at or below the ultimate parent entity, [], a [] corporation (an "Upstream Equity Owner") is a debtor under Title 11 of the United States Code (the "Bankruptcy Code"), a court of competent jurisdiction (the "Bankruptcy Court") would disregard the separate legal existence of the Company and consolidate its assets and liabilities with those of the Upstream Equity Owner. Capitalized terms used herein and not defined herein shall have the meaning assigned to such term in the PPA.

In rendering the opinions expressed below, we have examined and relied upon copies or forms of the following documents, each dated as of the date hereof except as otherwise noted:

1. (1) Those documents itemized and described on Schedule 1 attached hereto and incorporated herein (collectively, the "Operative Agreements");

2. (2) Those documents itemized and described on Schedule 2 attached hereto and incorporated herein (collectively, the "Entity Documents"); and

3. (3) The Certificates attached hereto as Exhibits A, B, and C and incorporated herein (collectively, the "Certificates").

The Operative Agreements, the Entity Documents and the Certificates are collectively referred to herein as the "Documents."

FACTUAL BACKGROUND

Pursuant to the PPA, the Company will construct and develop a [].

The Company's obligations under the PPA are secured by [] as described in [] of the PPA. The Company's Operating Agreement (as described in Schedule 2) limits the Company's purpose to [].

Based upon our review of the Entity Documents, on the Effective Date, [SELLER TO INSERT DESCRIPTION OF ENTITY DOCUMENTS].

ASSUMPTIONS

Our opinions herein are expressly predicated on each of the material assumptions discussed herein, all of which we have assumed to the extent material to our opinions, and which we have made with your approval and without any independent investigation or inquiry other than examination of the instruments and other documents explicitly referenced herein. We have assumed with your approval that the Buyer would, within any and all applicable time periods under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and any applicable local or court rules, file a written objection to any motion or other proceeding seeking to substantively consolidate the Company with an Upstream Equity Owner, and that such objection would be competently briefed and argued by the Buyer to a final judicial resolution. We have assumed (i) no fraudulent or bad faith activity on the part of the Company or the Upstream Equity Owners; (ii) that each Upstream Equity Owner will not (A) hold itself out as being obligated to pay, and will not pay, the debts of the Company, or (B) comingle its assets with those of the Company; (iii) that the Buyer has relied on the separate existence, credit and assets of the Company in entering into the Operative Agreements with the Company; (iv) substantive consolidation of the Company with an Upstream Equity Owner would be materially prejudicial to the Buyer or the Company's unsecured creditors; and (v) that the only Upstream Equity Owners are [].

As to matters of fact, we have reviewed and, with your approval and without any independent inquiry, have relied exclusively upon the statements, representations, warranties, and covenants contained in the Documents. We have further assumed, to the extent material to the opinion set forth herein, that such statements, representations, and warranties are now, and will remain, accurate, and that such covenants will be kept, observed and otherwise performed until all obligations of the Company under the PPA are fulfilled and discharged in full.

Additionally, to the extent material to our opinion, we have assumed, without independent inquiry, the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons, and the conformity to the originals of all documents submitted to us as copies and the authenticity of the originals thereof. We have also assumed, to the extent material to our opinion and without independent inquiry, that the Company is duly formed, that it has since its formation been validly existing as a separate entity, that it has at all relevant times complied with the separateness covenants set forth in its Entity Documents, that the Company has the limited liability company power and authority to enter into and perform all of its obligations under all of the Documents to which it is a party, and that each Upstream Equity Owner has the limited liability company or corporate power and authority to enter into and perform all of its obligations under all of the Documents to which it is a party, and we have also assumed as to each of the Company and each Upstream Equity Owner the due authorization by all requisite limited liability company or corporate action, the due execution and delivery, and the validity, binding effect and enforceability of all such Documents in accordance with their terms.

We assume that, to the extent material to the Company's separateness, that the Company has complied in all material respects, is in compliance in all material respects, and at all times in the future will continue to comply in all material respects, with the provisions set forth in its Entity

Documents. Notwithstanding anything else in this opinion or the Documents, we do not assume that the Company or each Upstream Equity Owner will remain solvent, contribute additional capital, not become a debtor under the Bankruptcy Code or have the ability to pay its debts in the future.

LEGAL BACKGROUND

Substantive consolidation (for convenience, sometimes referred to herein as a "consolidation") is an equitable doctrine that permits a Bankruptcy Court, in appropriate circumstances, to disregard the legal separateness of a debtor and a related but distinct legal entity, which may or may not itself be a debtor in bankruptcy, and to combine their respective assets and liabilities for bankruptcy purposes. Substantive consolidation typically results in the pooling of liabilities and assets of the entities to be consolidated, the satisfaction of liabilities from the resultant common fund of assets, and the elimination of duplicate and inter- entity claims. E.g., United Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F.2d 515, 518 (2d Cir. 1988) (citing 5 Collier on Bankruptcy § 1100.06, at 1100.32 n.1 (L. King ed.15th ed. 1988)); In re Standard Brands Paint Co., 154 B.R. 563, 569 (Bankr. C.D. Cal. 1993). The doctrine is distinct from the "administrative" consolidation, more properly referred to as joint administration, of multiple cases by a single Bankruptcy Court, which does not dictate a combination of assets and liabilities, and accordingly is not considered herein.

Because the entities sought to be consolidated may have different debt-to-asset ratios, substantive consolidation may redistribute wealth among the entities' creditors. See Eastgroup Properties v. Southern Motel Assoc., Ltd., 935 F.2d 245, 248 (11th Cir. 1991) (quoting Drabkin v. Midland-Ross Co, (In re Auto-Train Corp.), 810 F.2d 270, 276 (D.C. Cir. 1987)). Thus, substantive consolidation can vitally affect parties' substantive rights, and courts have stated that it should be used only sparingly after careful scrutiny of the evidence. E.g., In re Adelphia Commc'ns Corp., 544 F.3d 420, 426, n. 4 (2d Cir. 2008); In re Owens Corning, 419 F.3d 195, 215 (3d Cir. 2005); FDIC v. Colonial Realty Co., 966 F.2d 57, 61 (2d Cir. 1992) (quoting Chemical Bank v. Kheel, 369 F.2d 845, 847 (2d Cir. 1966)).

Substantive consolidation is somewhat analogous to the non-bankruptcy remedy of "piercing the corporate veil," which may permit a plaintiff to disregard the corporate entity and its separateness under appropriate circumstances. See, e.g., Consolidated Rock Products Co. v. Du Bois, 312 U.S. 510 (U.S. 1941). Applied as a bankruptcy doctrine, substantive consolidation addresses the special interest of a Bankruptcy Court in ensuring the equitable treatment of all creditors, rather than a particular plaintiff alleging fraud or other improprieties in the conduct of the affiliated entities. E.g., FDIC v. Colonial Realty, 966 F.2d at 61; Augie/Restivo, 860 F.2d at 518; In re Cooper, 147 B.R. 678, 683-84 (Bankr. D.N.J. 1992). Consequently, the determination in a substantive consolidation proceeding is less likely to be based solely on specific allegations of fraud or intent to hinder a particular creditor or group of creditors, and will instead center on the Bankruptcy Court's analysis of whether consolidation would be more equitable to all parties under the circumstances. See, e.g., In re Munford, Inc., 115 B.R. 390 (Bankr. N.D. Ga. 1990).

In addition, Bankruptcy Courts may be asked to impose consolidation as part of a proposed reorganization plan, where the argument is based not on wrongdoing or reliance but on the assertion that consolidation of the assets and liabilities of two or more affiliated debtors would

permit confirmation of a plan in a case that would otherwise require liquidation. E.g., In re Piece Goods Shops Co., L.P., 188 B.R. 778, 786 (Bankr. M.D.N.C. 1995); Bruce Energy Centre Ltd. v. Orfa Corp. of America (In re Orfa Corp. of Philadelphia), 129 B.R. 404, 414-15 (Bankr. E.D. Pa. 1991) (citing In re F.A. Potts & Co., 23 B.R. 569, 572 (Bankr. E.D. Pa. 1982)).

Authority to Grant Substantive Consolidation

The authority of a Bankruptcy Court to substantively consolidate a debtor with another entity that is a debtor in bankruptcy is well established. That authority to order substantive consolidation stems both from section 105 of the Bankruptcy Code, which authorizes Bankruptcy Courts to issue any order, process or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code, and more generally from the Bankruptcy Court's general equitable powers. E.g., Alexander v. Compton (In re Bonham), 229 F.3d 750, 763 (9th Cir. 2000); Standard Brands, 154 B.R. at 567 (citing cases); FDIC v. Colonial Realty, 966 F.2d at 60 (citing Pepper v. Litton, 308 U.S. 295, 304 (1939)).

While most of the federal circuit courts have held that a Bankruptcy Court has the power to order substantive consolidation, the Fifth Circuit noted in passing that this issue remains undecided in that Circuit. In Wells Fargo Bank of Texas N.A., v. Ronald J. Sommers, Trustee (In re Amco Insurance), 444 F.3d 690 (5th Cir. 2006), cert. denied, 127 S. Ct. 389 (2006), the Bankruptcy Court had granted a retroactive or "nunc pro tunc" substantive consolidation of a corporate debtor and its individual owner, who had filed bankruptcy approximately eleven months after the corporation. In an opinion that is replete with cautionary instructions to lower courts regarding the use of substantive consolidation, including consolidation of a debtor with a non-debtor affiliate, the Fifth Circuit concluded the Bankruptcy Court erred in granting consolidation on such "nunc pro tunc" basis. In response to the bank's alternative argument that the Bankruptcy Court lacks the power to grant substantive consolidation by reason of the Supreme Court's holding in Grupo Mexicano de Desarrollo, S.A. v. Alliance Bank Fund, Inc., 527 U.S. 308 (1999), the Fifth Circuit exercised its discretion to decide that question another day. See Amco Insurance, supra at 696, footnote 5. This issue is further developed in several articles: (i) J. Maxwell Tucker, Grupo Mexicano and the Death of Substantive Consolidation, 8 Am Bankr. Inst. L. Rev. 427 (Winter 2000), (ii) Douglas G. Baird, Substantive Consolidation Today, Vol. XLVII Boston College Law Review 1, 15 (December 2005), and (iii) Sabin Willett, The Doctrine of Robin Hood, A Note on "Substantive Consolidation," 4 DePaul Business & Commercial Law Journal 87 (Fall 2005).

Some courts have extended the foregoing power to permit the consolidation of a debtor with a second entity that is not a debtor in bankruptcy. E.g., Munford, 115 B.R. at 396-97 (citing Sampsell v. Imperial Paper Corp., 313 U.S. 215, reh'g denied, 313 U.S. 600 (1941) and Soviero v. Franklin National Bank, 328 F.2d 446 (2d Cir. 1964)); In re New Center Hosp., 187 B.R. 560, 567 (E.D. Mich. 1995). However, other courts have concluded that the imposition of bankruptcy law upon a non-debtor, through substantive consolidation, exceeds the jurisdictional reach of the Bankruptcy Code and is procedurally deficient in its failure to deal fairly with creditors of the non-debtor. Peoples State Bank v. Gen. Elec. Capital Corp. (In re Ark-La-Tex Timber Co., Inc.), 482 F.3d 319, 327, n.7 (5th Cir. 2007) ("Under these facts, a substantive consolidation would have been impossible to effect, because Alba and Pearl were not in bankruptcy"); In re Alpha & Omega Realty, Inc., 36 B.R. 416, 417 (Bankr. D. Idaho 1984); In re DRW Property Co., 54 B.R. 489, 497 (Bankr. N.D. Tex. 1985). Even some of the cases which permit the inclusion of a non-bankrupt

party note that only extraordinary circumstances should permit such a remedy. E.g., Morse Operations, Inc. v. Robins Le-Cocq, Inc. (In re Lease-A-Fleet Inc.), 141 B.R. 869, 873, 877-78 (Bankr. E.D. Pa. 1992). The Lease-A-Fleet court noted that the inclusion of a solvent non-debtor in a bankruptcy case without its voluntary filing circumvents the requirements of 11 U.S.C. § 303. 141 B.R. at 873.

Bankruptcy Courts that have permitted substantive consolidation of a non-debtor with a debtor in a bankruptcy proceeding have often involved a pattern of fraud, see, e.g., Sampsell, 313 U.S. 215, 220-21, a flagrant disregard for corporate formalities, extensive commingling of assets, or other facts that render the segregation of the entities' respective assets and liabilities virtually impossible and, under the circumstances, inequitable. E.g., In re United Stairs Corp., 176 B.R. 359 (Bankr. D.N.J. 1995); Soviero, 328 F.2d 446; New Center Hosp., 187 B.R. at 568.

Factors Supporting Substantive Consolidation

The doctrine of substantive consolidation has been shaped by courts as a continuing and developing body of case law, without the benefit of bright-line statutory rules or definitive standards. In determining whether consolidation is appropriate, courts have instead identified and developed various factors to be considered, which are (consistent with the nature of an equitable remedy) weighed on a case-by-case basis. The principal factors which have been considered by courts ruling on substantive consolidation include the following:

(a) Common Ownership or Control. Common ownership or control of the debtor, and the entities sought to be consolidated with the debtor, can increase the likelihood of consolidation. Orfa, 129 B.R. at 415 (citing cases).

(b) Identical or Overlapping Officers or Directors. When the debtor and the entities sought to be consolidated have identical or overlapping officers or directors, this is a factor that can increase the likelihood of consolidation. See, e.g., Lease-A-Fleet, 141 B.R. at 871, 877 (refusing to consolidate independent entities that had overlapping directors).

(c) Consolidated Tax Returns or Financial Reporting. When the debtor and its affiliates file consolidated tax returns or report their assets and liabilities on a consolidated basis in financial statements or Securities and Exchange Commission documents, consolidation may be more likely. Compare Saccurato v. Shawmut Bank, N.A. (In re Mars Stores, Inc.), 150 B.R. 869, 880 (Bankr. D. Mass. 1993) (consolidated financial statements in 10-Q weighed in favor of consolidation) with Auto-Train, 810 F.2d at 278 (S-1 registration statement supported creditor's claim of reliance on separate credit of entity sought to be consolidated).

(d) Inter-Affiliate Debts or Guarantees. The presence of numerous inter- affiliate debts or guarantees is a factor that typically weighs in favor of consolidation, particularly if such debts or guarantees would be difficult or costly to untangle. See, e.g., Standard Brands, 154 B.R. at 568, 572. A court might also rely on a creditor's acceptance of an inter-corporate guarantee as evidence that the creditor knew of the consolidated nature of the debtor's business and did not rely on the separate credit of any entity sought to be consolidated in extending credit. E.g., In re Snider Bros. Inc., 18 B.R. 230, 238 n.5 (Bankr. D. Mass. 1982); In re Commercial Envelope Mfg. Co., Inc., 3 B.C.D. 647, 650 (Bankr. S.D.N.Y. 1977). On the other hand, a creditor's decision to bargain

separately for a specific guarantee from an affiliate suggests that creditor's awareness of the corporate distinction. E.g., In re Donut Queen, Ltd., 41 B.R. 706, 710 (Bankr. E.D.N.Y. 1984).

(e) Undercapitalization. When the debtor or the entity sought to be consolidated is grossly undercapitalized for its business undertakings, the likelihood of consolidation with its affiliates increases. See e.g., In re 1438 Meridian Place, N.W., Inc., 15 B.R. 89, 96 (Bankr. D.C. 1981).

(f) Commingling of Assets or Business Functions. The debtor's commingling of assets or business functions with its affiliates is a factor weighing in favor of consolidation. See, e.g., Soviero, 328 F.2d at 448; F.A. Potts, 23 B.R. at 571 (evidence showed that the two companies were "essentially one operation"); In re Stop & Go of America, Inc., 49 Bankr. 743, 748 (Bankr. D. Mass. 1985) (the court consolidated a shell company which had no separate stationery, telephone, office, bank account, employees, expenses or income, and as a result remained invisible from creditors, who were led to believe that the party they were dealing with owned the asset, which in fact was held by the shell). One such indicator may be if one company is held out generally as an internal division or department of the other. Fish v. East, 114 F.2d 177, 191 (10th Cir. 1940). Consolidation may also be appropriate where the debtor and its affiliates are merely functionally integrated, if other factors favoring consolidation are present. See, e.g., Standard Brands, 154 B.R. at 572.

(g) Failure to Maintain Corporate and Other Formalities. The failure of an entity to maintain corporate formalities is a probative factor arguing in favor of substantive consolidation. E.g., In re Snider Bros. Inc., 18 B.R. at 234; see also Soviero, 368 F.2d at 448 (flagrant disregard of corporate forms).

(h) Fraudulent or Preferential Transfers. When significant fraudulent or preferential transfers exist between the debtor and the entity sought to be consolidated, courts sometimes may grant consolidation in part in order to obviate the cost of avoiding or recapturing such transfers. See, e.g., Walter E. Heller & Co. v. Langenkamp (In re Tureaud), 59 B.R. 973, 977 (N.D. Okla. 1986); Standard Brands, 154 B. R. at 571. Other courts, however, have noted that the more conventional methods for recovering such transfers expressly provided in the Bankruptcy Code are preferable to the more radical remedy of substantive consolidation. See, e.g., Lease-A-Fleet, 141 B.R. at 875-76.

(i) Fraudulent or Inequitable Use of an Affiliate. When the debtor uses an affiliate to shield fraud, hinder creditors, or otherwise advance an inequitable result, consolidation is more likely. E.g., Sampsell, 313 U.S. at 216; Maule Indus. v. Gerstel, 232 F.2d 294 (5th Cir. 1956); Walter E. Heller & Co. v. Langenkamp (In re Tureaud), 45 B.R. 658 (Bankr. N.D. Okla. 1985).

(j) Degree of Difficulty in Segregating Assets and Liabilities. An important factor in consolidation decisions is the degree of difficulty in segregating the various entities' respective assets and liabilities. Consolidation is more likely to be granted if the entities' assets and liabilities are so entangled that their segregation is impossible or can only be achieved at great expense. See, e.g., Augie/Restivo, 860 F.2d at 519. But see DRW Property, 54 B.R. at 496 (refusing to grant consolidation even though it would cost over $2 million to disentangle the various entities).

(k) Reliance on separate credit. In order to uphold commercial expectations, courts frequently refuse consolidation where objecting creditors demonstrate their reasonable reliance on the

separate credit of one of the entities sought to be consolidated. E.g., Auto-Train, 810 F.2d at 277-78; Augie/Restivo, 860 F.2d at 518-519. Some courts have held, however, that a creditor may be estopped from asserting such reliance, if it knew or should have known of a sufficiently close association among the entities sought to be consolidated. Eastgroup, 935 F.2d at 249 n. 11 (citing Snider Bros., 18 B.R. at 235, 237, 238). Alternatively, if creditors dealt with the debtor and its related entities as a single integrated entity, that fact weighs in favor of consolidation, but is not controlling. Compare Munford, 115 B.R. at 395-96 (granting consolidation) with In re Crown Machine & Welding, Inc., 100 B.R. 25, 28 (Bankr. D. Mont. 1989) (consolidation refused even though creditors believed they were dealing with one entity).

(l) Prejudice or Benefit to Creditors. Similarly, substantive consolidation may be refused if it inequitably prejudices specific creditors. See, e.g., Augie/Restivo, 860 F.2d at 517-19 (consolidation refused when it would have subordinated secured lender's unsecured deficiency claim). However, that some creditors will be affected adversely by consolidation may not be controlling, at least where conflicting interests can be balanced in a way to provide rough justice. In re Murray Indus., Inc., 119 B.R. 820, 828 (Bankr. M.D. Fla. 1990) (citing In re Commercial Envelope Mfg. Co., 3 B.C.D. 647 (S.D.N.Y. 1977)). Thus, if consolidation would benefit certain creditors directly, it could be granted notwithstanding other creditors' objections. E.g., Eastgroup, 935 F.2d at 251 (permitting consolidation in part because it would increase the pro rata distribution to priority creditors, and where creditors claiming prejudice did not show they relied solely on separate credit of entity to be consolidated).

(m) Non-Debtor Status of Entities to be Consolidated. As discussed above, a number of courts have expressed reluctance to consolidate a debtor with entities that are not themselves debtors in bankruptcy. Accordingly, in such cases consolidation may be denied or granted only on a showing of extraordinary circumstances.

(n) Economic Benefits of Consolidation. A factor frequently considered by courts is the potential "benefit to creditors or the bankruptcy estate" of consolidating the debtor and its entities, e.g., In re Vecco Construction Indus. Inc., 4 B.R. 407, 410 (Bankr. E.D. Va. 1980). As discussed above, consolidation has been granted in some cases in part because it improved a debtor's chances for a successful financial reorganization.

Application of the Factors

Courts generally agree that the central inquiry in evaluating a motion for substantive consolidation should be whether the economic prejudice resulting from continued recognition of the entities' separateness outweighs the economic prejudice that would be caused by the entities' consolidation. E.g., Eastgroup, 935 F.2d at 249 (quoting Snider Bros., 18 B.R. at 234). No single factor is likely to be determinative, nor is a particular combination always decisive. Not all of the factors favoring consolidation need be present in order to justify consolidation. E.g., Orfa, 129 B.R. at 415. Implicit in substantive consolidation analysis is the general assumption that creditors will deal with apparently separate entities as separate, and therefore should be entitled to rely on their separateness.

The standards upon which substantive consolidation is determined varies among the circuit courts. A number of reported cases have relied on a recitation of some subset of the foregoing factors, and performed a case-by-case application to the relevant facts. See, e.g., Vecco Construction, 4 B.R. at 410. Generally in these cases consolidation has been regarded as an extraordinary remedy, putting the burden on the proponent of consolidation to prove that the benefits would outweigh any resulting prejudice. Augie/Restivo, 860 F.2d at 518; Snider Bros., 18 B.R. at 238.

Three circuits have articulated similar, but not identical, standards of proof for substantive consolidation analysis; no single approach has been embraced as the determinative test. *See* William Blasses, Redefining into Reality: Substantive Consolidation of Parent Corporations and Subsidiaries, 24 Emory Bankr. Developments J. 469, 486 (Spring 2008).

The Second Circuit in 1988 described the foregoing factor test as variants on two critical criteria: (1) whether creditors dealt with the subject entities as separate, or a single economic unit, in extending credit, and (2) whether the affairs of the subject entities are so entangled that consolidation will benefit all creditors, because segregating the entities' respective affairs is impossible or so costly as to threaten the realization of any net assets for creditors. Augie/Restivo, 860 F.2d at 518-19; see also FDIC v. Colonial Realty, 966 F.2d at 61 (affirming the Augie/Restivo standard). This standard was adopted by the Ninth Circuit in Alexander v. Compton, 229 F.3d at 765, although the Ninth Circuit placed the burden on the objecting creditor "to overcome the presumption that they did not rely on the separate credit" of the entities to be considered. Alexander v. Compton, 229 F.3d at 766-767. If the proponent of consolidation establishes that either of these criteria is satisfied, consolidation may be granted. Thus, for example, in Lease-A-Fleet, the court concluded that common ownership, overlapping directorships, common use of space, and the existence of a "substantial, yet informal" debtor-creditor relationship (as opposed to an intermingling of assets) between a debtor and a non-debtor entity, while arguably satisfying several of the common factors for substantive consolidation, are "patently insufficient" to establish the degree of entanglement necessary to render consolidation an appropriate remedy. Lease-A-Fleet, 141 B.R. at 877. Conversely, where a sufficiently substantial pattern of entanglement exists between two entities, the presence of a handful of factors which distinguish them will not preclude their consolidation. E.g., In re Creditors Service Corporation, 195 B.R. 680, 687 (Bankr. S.D. Ohio 1996) (separate office leases by two companies were rejected as sufficient evidence to preclude consolidation); F.A. Potts, 23 B.R. at 573 n. 3 (the presence of appropriately distinct and complete financial records for two companies does not rebut an otherwise valid case for their consolidation).

The D.C. Circuit requires the proponent of consolidation to demonstrate (1) a "substantial identity" between the entities sought to be consolidated (based on the foregoing factors or some subset), and (2) that consolidation is necessary to avoid some harm or realize some benefit. Auto-Train, 810 F.2d at 276. The Eighth Circuit and Eleventh Circuit have substantially adopted the Auto-Train test. In re Giller, 962 F.2d 796, 799 (8th Cir. 1992); Eastgroup, 935 F.2d at 249. However, the Eleventh Circuit adopts a more permissive standard. Upon the proponent's establishment of a prima facie case of "substantial identity" and harm or benefit, the burden shifts to objecting creditors to prove that they reasonably relied on the separate credit of one of the entities sought to be consolidated in extending credit and that they would be prejudiced by consolidation. If a creditor proves reasonable reliance and prejudice, consolidation may be granted only if its benefits "heavily outweigh" its detriments. Id. The foregoing analysis implies that if an objecting creditor fails to

prove either reasonable reliance or prejudice, however, consolidation may be granted even if its benefits do not "heavily outweigh" its detriments.

The Third Circuit more recently adopted its own standards for substantive consolidation in In re Owens Corning, 419 F.3d 195 (3d Cir. 2005). While generally supporting the more stringent standards for substantive consolidation set forth in Augie/Restivo, and criticizing the less stringent standards of Auto-Train, the Owens Corning court articulated the following as its test:

In our Court what must be proven (absent consent) concerning the entities for whom substantive consolidation is sought is that (i) pre- petition they disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one entity, or (ii) post petition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors. In re Owens Corning, 419 F.3d at 211.

The Third Circuit clarified that a prima facie case for the first prong exists generally when, "based on the parties' prepetition dealings, a proponent proves corporate disregard creating contractual expectations of creditors that they are dealing with debtors as one indistinguishable entity." Owens Corning, 419 F.3d at 212. In addition, creditor proponents must demonstrate that they actually relied on the debtors' unity and that this reliance was reasonable. Id. Assuming a prima facie case is established, opponents may still defeat a motion for substantive consolidation under the first rationale by showing that they would be adversely affected and that they actually relied on the debtor's separate existence. Id.

ANALYSIS

The Company's Operating Agreement requires that the Company (i) hold out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person, (ii) maintain its own separate books and records and bank accounts, (iii) maintain accounting records and other Company documents separate from any other Person, (iv) conduct business in its own name, and (v) hold assets in its own name. Based on the assumptions that underlie this opinion, there are no significant inter-affiliate debts or obligations involving the Company on the one hand and any of its Upstream Equity Owners on the other.

With respect to potential harm to the Buyer, there exists at least some authority for permitting substantive consolidation over the objection of a fully secured creditor (i.e., the Buyer) on the ground that such a creditor is not harmed by substantive consolidation. E.g., F.A. Potts, 23 B.R. at 573; see also In re Mortgage Investment Co., of El Paso, Texas, 111 B.R. 604, 610 (Bankr. W.D. Tex. 1990) (overruling secured creditor's objection to reorganization plan calling for substantive consolidation of affiliates where secured creditor failed to demonstrate harm from consolidation and arguably received "indubitable equivalent" of its secured claim). However, we believe that the F.A. Potts decision is distinguishable on its facts because the secured creditor in that case conceded that it would not be prejudiced by substantive consolidation if its claims were fully secured. In contrast, we have assumed here that the Buyer, or other creditors of the Company holding in the aggregate a material amount of unsecured claims, would actively prosecute an objection to substantive consolidation on the grounds that it would inflict inequitable prejudice on the Buyer or such unsecured creditors regardless of whether the Buyer's claims are fully secured.

Based on the assumed facts, a few of the factors commonly recited as supporting consolidation can be shown to exist at this time, [such as common ownership and control, consolidated financial reporting, and overlapping officers and directors.] Most of the assumed facts, however, affirmatively establish the absence of other, arguably more important, factors whose presence would weigh in favor of substantive consolidation, including: (i) commingling of assets, (ii) undercapitalization of the Company, (iii) fraudulent or preferential transfers between the Company and its Upstream Equity Owners, and (iv) difficulty in segregating the assets and liabilities of the Company from those of its Upstream Equity Owners. The assumed facts also do not establish that the benefit to any creditor group resulting from substantive consolidation would outweigh the detriment to other creditors from such consolidation. Moreover, the facts do not indicate the presence of any of the flagrant or egregious factors that would support application of the extraordinary remedy of substantive consolidation of the Company, as a non-debtor, with one or more of its Upstream Equity Owners, should it or they become a debtor. Under the assumptions on which we have relied with your approval, we have assumed that the Buyer would seek to establish that it relied on the separate credit and existence of the Company, and the Company's obligations to (i) operate in such a way as to maintain its entity existence separate and apart from any other entity, and (ii) maintain its assets and liabilities separate from those of any other person or entity, except as permitted by the terms of the Documents. The efforts of an additional creditor group's endeavoring to establish prejudice would be an additional factor militating against substantive consolidation.

OPINION

Based on the foregoing facts and the discussion set forth herein, and on a reasoned analysis of analogous case law, it is our opinion that if one or more of the Upstream Equity Owners becomes a debtor in a case under the Bankruptcy Code, a Bankruptcy Court, exercising reasonable judgment after full consideration of all relevant circumstances, in a properly presented and argued case in which a party-in-interest makes a timely objection to substantive consolidation, would not disregard the separate existence of the Company so as to order substantive consolidation of the assets and liabilities of the Company with those of the Upstream Equity Owner(s). Our opinion is subject to the assumptions, limitations and qualifications set forth in this opinion letter and made in reliance of the accuracy of, and compliance with, the representations, warranties and covenants set forth in the Documents, all of which we have assumed to the extent material to the opinion set forth herein.

QUALIFICATIONS

Our opinion is limited to the matters expressly set forth in this opinion letter, and no opinion is to be implied or may be inferred beyond the matters expressly so stated. We do not purport to express an opinion on any laws other than the federal bankruptcy laws of the United States of America in effect as of the date this opinion is given. These opinions are given as of the date hereof, and we assume no obligation to inform you of changes in the facts or law bearing on these opinions even if such changes are brought to our attention. We are not, by issuing this opinion, undertaking to provide you with any legal advice in connection with the transactions at issue.

This opinion is rendered as of the date first written above solely for the Buyer's benefit in connection with the Operative Agreements, and may not be quoted to, relied on by, nor may copies be delivered to, any other person or entity without our prior written consent, other than delivery of a copy to the National Association of Insurance Commissioners or other regulatory body having jurisdiction over the Buyer, or in response to a subpoena or court order. In addition, at your request, we hereby consent to delivery of a copy to, and reliance hereon by, any Participating Member and any future assignee of, or participant or other holder of a beneficial interest in, an interest in the Operative Agreements pursuant to an assignment or participation or trust agreement that is made and consented to in accordance with the express provisions of the applicable Operative Agreement, or to any future successor of the Buyer or to any national statistical rating agency, on the condition and understanding that (i) this letter speaks only as of the date hereof, and (ii) we have no responsibility or obligation to update this letter, to consider its applicability or correctness to any party other than its addressees, or to take into account changes in law, facts or any other developments of which we may later become aware, and (iii) any such reliance by a future assignee or participant or other holder must be actual and reasonable under the circumstances existing at the time of assignment or participation, including any changes in law, facts or any other developments known to or reasonably knowable by the assignee or participant at such time.

Very truly yours,

_____

EXHIBIT M

ENFORCEABILITY OPINION

[To be attached]

EXHIBIT N

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are reasonably likely to affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all material agreements, contracts, permits (including Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT O

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*Licensed Professional Engineer*] ("**Engineer**") to Southern California Public Power Authority, a California joint powers authority (**"Buyer"**) in accordance with the terms of that certain Renewable 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.

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with an Installed Generating Facility Capacity of no less than ninety-five percent (95%) of the Guaranteed Generating Facility Capacity. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Generating Facility Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Guaranteed Storage Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

5. The Transmission Provider has provided documentation supporting full unrestricted release of the Facility for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.

6. The CAISO has provided notification supporting Commercial Operation of the Facility, in accordance with the CAISO Tariff on _____[DATE]_____.

7. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

8. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

9. The Storage Facility and its meters have been designed and installed in a manner such that all Energy used for Auxiliary Use within the Storage Facility is metered, and there is no Station Use within the Facility (outside of the Storage Facility) that is served by Energy from the Storage Facility.

10. The total rated power of the Storage Facility inverters associated with the Installed Storage Capacity as measured to the Delivery Point is at least [____] MW charging and [____] MW discharging at 45°C ambient air temperature.

11. All equipment comprising the Facility has been installed in accordance with the manufacturer's specifications.

12. Seller has obtained all of the Permits required for the development, construction, operation and maintenance of the Facility.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT P-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity and related characteristics of the Facility is delivered by [Licensed Professional Engineer] ("**Engineer**") to Southern California Public Power Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility, which included a performance test for the Generating Facility that demonstrated peak electrical output at the Delivery Point for such amount (as adjusted for ambient conditions on the date of the performance test), is __ MW AC ("**Installed Generating Facility Capacity**");

(b) The Commercial Operation Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit AA (the "**Installed Storage Capacity**");

(c) The sum of (a) and (b) is __ MW AC and shall be the "**Installed Capacity**"; and

(d) Such Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __% and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit AA.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT P-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [Licensed Professional Engineer] ("**Engineer**") to Southern California Public Power Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit AA of the Agreement (the "**Effective Storage Capacity**"); and

(b) Such Storage Capacity Test demonstrated (i) a Battery Charging Factor of __% and (ii) a Battery Discharging Factor of each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit AA.

(c) Such Storage Capacity Test demonstrated a Dischargeable Energy capability of ___ MWh.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT Q-1

MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY

[MW Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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SEP																								
OCT																								
NOV																								
DEC																								

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

EXHIBIT Q-2

MONTHLY EXPECTED GENERATING FACILITY ENERGY

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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SEP																								
OCT																								
NOV																								
DEC																								

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

EXHIBIT Q-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

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

EXHIBIT Q-4

MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – [*Insert Month*]

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

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

EXHIBIT R

ORGANIZATIONAL STRUCTURE AND OWNERSHIP OF SELLER AND UPSTREAM EQUITY OWNER

This Exhibit R may be updated from time to time by agreement of Buyer and Seller to account for a Change of Control that has been consented to by Buyer in accordance with this Agreement.

Section 1. **Specified Ultimate Parent.**

[ ]

Section 2. **Organizational and Ownership Structure of Seller and Upstream Equity Owners**.

See attached.

Section 3. **Principals:**

[ ]

EXHIBIT S

METEOROLOGICAL AND PYRANOMETER MEASUREMENTS

[To be completed by the Parties]

EXHIBIT T

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

(A – B) * (C – D)

where:

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

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

C = the replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Day-Ahead Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO for the SP-15 Existing Zone Generation Trading Hub (as defined in the CAISO Tariff), plus (b) the market value of Replacement Green Attributes as determined by Buyer.

D = the Renewable Rate, in $/MWh

"**Adjusted Energy Production**" shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output – Excess MWh.

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

"**Replacement Product**" means RPS and EPS Compliant replacement PCC1 bundled energy and Replacement Green Attributes delivered in accordance with Section 4.7 and otherwise acceptable to Buyer in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year unless otherwise approved by Buyer.

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

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

EXHIBIT U

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [SELLER ENTITY] ("**Seller**") to Southern California Public Power Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable 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 agreement with the EPC Contractor related to the Facility was executed on _____;

(2) Construction Start (as defined in Exhibit J of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

(3) the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and

(4) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____ (such description shall amend the description of the Site in Exhibit B of the Agreement).

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

[SELLER ENTITY]

By:_____
Its:_____

Date:_____

EXHIBIT V

SINGLE-LINE DIAGRAM

[To be attached]

EXHIBIT W

METERING DIAGRAM

[To be attached]

EXHIBIT X

FORM OF REPLACEMENT RA NOTICE

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

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

Unit Information (To be repeated for each unit if more than one)

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (substation or transmission line)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in the most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	**Unit CAISO Net Qualifying Capacity (MW)**	**Unit Contract Quantity (MW)**
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[SELLER ENTITY]

By:_____
Its:_____

Date:_____

EXHIBIT Y

FORM OF TAX EQUITY CONSENT AND ESTOPPEL

Reference is made to that certain Power Purchase Agreement (dated as of [___], 20[] (the "***Agreement***"), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("***Buyer***"; *provided*, that in no event shall the term "Buyer" refer to any of the members of Buyer, and the term "***Buyer's knowledge***" as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and [Seller a limited liability company] ("***Seller***"). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the Agreement, as amended, attached as [Exhibit A], constitutes a true and complete copy of the Agreement.

2. The Agreement is in full force and effect and has not been modified or amended in any way [since [_____ __, 20_]], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Estoppel Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [___], 20[].

3. Buyer has not transferred or assigned its interest in the Agreement, except for [].

4. Buyer is not in default under the Agreement nor has Buyer, to Buyer's knowledge, breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the Agreement or that would give Seller the right to terminate the Agreement. To Buyer's knowledge, Seller is not in default under the Agreement nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the Agreement or that would allow Buyer to terminate the Agreement.

5. All representations made by Buyer in the Agreement were, to Buyer's knowledge, true and correct as of the Effective Date of the Agreement and continue to be true and correct.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the Agreement has occurred and is continuing.

7. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the Agreement. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the Agreement.

9. All payments due and owing[, except for those under dispute as described in Schedule I hereto[1]], under the Agreement by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [_____], 20[__].

11. The Installed Capacity as of the Commercial Operation Date is [ ] MW.

[12. Upon the occurrence of a Default by Seller under the Agreement, Buyer shall give concurrent notice of such Default to Seller and Tax Equity Investor. Buyer will not terminate the Agreement or suspend performance of its services under the Agreement on account of any Default) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) thirty (30) days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the Agreement, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer (or up to sixty (60) additional days, so long as the Tax Equity Investors reasonably demonstrate to Buyer that they are diligently pursuing appropriate action to cure and are making sufficient progress toward curing such Default); *provided*, that if the Tax Equity Investors are prohibited from curing any such Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long as the Tax Equity Investors have diligently pursued removal of such process, stay or injunction, but in no event more than one hundred twenty (120) days. Failure of Buyer to provide such notice to Tax Equity Investor shall not constitute a breach of the Agreement or this Tax Equity Consent and Estoppel and Tax Equity Investor agrees that Buyer shall have no liability to Tax Equity Investor for such failure whatsoever; *provided* that no claim of Default or termination of the Agreement by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Tax Equity Investor fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the Agreement.[2]]

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

_____

Name:
Title:

1 To include if applicable.

2 Bracketed language in 10, 11 and 12 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

Schedule I

SCHEDULE I TO FORM OF TAX EQUITY CONSENT AND ESTOPPEL[3]

3 To include if applicable.

EXHIBIT Z

FORM OF CONSENT AND ESTOPPEL AGREEMENT

This CONSENT AND ESTOPPEL AGREEMENT (this "***Consent***"), dated as of _____, 20__, by and among Southern California Public Power Authority ("***Buyer***"), [_____] (in its capacity as collateral agent for the Facility Lenders under the Financing Agreement, as defined below, "***Collateral Agent***") and [Seller] ("***Seller***"). Each of Buyer, Seller and Collateral Agent is referred to under this Agreement as a "Party" and together they are referred to as the "Parties"; *provided*, that in no event shall the term "Buyer" refer to any of Buyer's Members. Capitalized terms used but not defined herein shall have the meanings set forth in the Agreement (as defined below).

RECITALS[4]

A. [_____] ("***Borrower***"), an indirect owner of Seller, entered into a Financing Agreement with Collateral Agent, as administrative agent and collateral agent and certain other lenders party thereto, dated as of _____, 20__ (the "***Financing Agreement***"), under which Seller will finance the construction of an up to [_____] [MW electric generating / storage] facility (the "***Facility***" as further described in the Agreement). Seller and Collateral Agent have also entered into a Guarantee and Security Agreement (the "***Security Agreement***") under which Seller collaterally assigned its interest under the Agreement to Collateral Agent as collateral for the credit facilities under the Financing Agreement and a deed of trust or mortgage under which Seller has granted to Collateral Agent a lien on the Facility to be recorded in [_____] (the "***Financing Deed of Trust***"). Additionally, [_____] ("***Pledgor***") has entered into a Guarantee, Pledge and Security Agreement pursuant to which it has pledged to Collateral Agent all of the membership interests in Seller, to secure Borrower's obligations under the Financing Agreement (the "***Pledge Agreement***" and, together with the Security Agreement and Financing Deed of Trust, the "***Lender Collateral Documents***"). [On the "***Term Conversion Date***" (which for purposes of this Consent shall mean the date upon which the construction period security is released, the construction loan is converted to a term loan, the Lender Collateral Documents are terminated, and the remaining collateral security in the Facility is as described by Collateral Agent in Section 4.10 hereof), the only remaining collateral security of Collateral Agent securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of Collateral Agent in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. A true and correct copy of each of the Lender Collateral Documents has been furnished to Buyer.][5]

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4 ***NTD: Conforming changes to be made throughout this Consent (including the Recitals) to reflect the structure of the applicable financing arrangement and the final form of consent is subject to the actual financing structure.***

5 ***NTD: It is anticipated that the Facility level liens would terminate on the Term Conversion Date. However, it is possible that they will not depending upon how the monetization of the anticipated tax credits from the Facility are structured. Conforming changes to be made to this Consent and Agreement to reflect the final financing structure***.

B. Buyer and Seller entered into that certain Power Purchase Agreement, dated as of [___], 20[ ], (as may be amended, supplemented, or modified from time to time, the "Agreement"), pursuant to which Seller will develop, finance, construct, own, and operate the Facility, and will, except as otherwise provided in the Agreement, sell the Energy to Buyer.

C. Pursuant to the Agreement, Seller is assigning, pursuant to the Security Agreement, to Collateral Agent Seller's interest under the Agreement.

AGREEMENT

1. Assignment and Agreement.

1.1 Consent to Assignment. Buyer hereby consents to the collateral assignment to Collateral Agent pursuant to the Security Agreement of Seller's rights to and under the Agreement, pursuant to the Financing Deed of Trust of Seller's interests in the Facility and pursuant to the Pledge Agreement of Pledgor's membership interests in Seller (together, the "***Assigned Interests***") as security for Borrower's obligations under the Financing Agreement. Subject to the terms and conditions of this Consent, Buyer agrees that in exercising its remedies, Collateral Agent may exercise Seller's rights under the Agreement.

1.2 Notices: Right to Cure by Collateral Agent. Upon the occurrence of a Default (as defined under the Agreement) by Seller under the Agreement, Buyer shall give concurrent notice of such Default to Seller and Collateral Agent. Buyer shall not terminate or suspend its performance under the Agreement until Collateral Agent has been given, (a) if such Default is a monetary Default, thirty (30) days after the later of (i) the expiration of all cure periods available to Seller under the Agreement and (ii) receipt of such notice to cure a monetary Default or, (b) if such Default is a nonmonetary Default, sixty (60) days after the later of (i) the expiration of all cure periods available to Seller under the Agreement and (ii) receipt of such notice (or up to sixty (60) additional days, so long as Collateral Agent reasonably demonstrates to Buyer that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such Default); *provided*, that if Collateral Agent is prohibited from curing any such Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction, but in no event more than one hundred twenty (120) days. Failure of Buyer to provide such notice to Collateral Agent shall not constitute a breach of the Agreement or this Consent by Buyer and Collateral Agent agrees that Buyer shall have no liability to Collateral Agent for such failure whatsoever; *provided*, that no claim of Default or termination of the Agreement by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Collateral Agent fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the Agreement.

1.3 Subsequent Owner or Replacement Agreement.

(a) Subsequent Owner. Subject to the terms and conditions of this Consent, the Parties agree that Collateral Agent shall, in accordance with Section 1.5, notify Buyer of the pendency of such foreclosure or transfer and, in addition, Collateral Agent shall subsequently notify Buyer following the occurrence of such foreclosure or transfer. If Collateral Agent notifies Buyer in writing that it has foreclosed on the Facility or the Assigned Interests pursuant to the Lender Collateral Documents, or taken a "deed in lieu of foreclosure", Collateral Agent or its permitted successor or assigns, or any other purchaser of the Assigned Interests shall be recognized as a party substituting for Seller under the Agreement so long as Collateral Agent or its permitted successor or assigns, or any other purchaser of the Assigned Interests meets the qualifications for a Qualified Transferee and expressly assumes in writing Seller's obligations under the Agreement and agrees to comply with the terms of the Agreement in connection with such foreclosure or the "deed in lieu of foreclosure" (each such permitted and qualified successor or assign or other purchaser of the Assigned Interests, a "***Subsequent Owner***") and the terms and conditions of the Agreement as in effect on such date of assignment or foreclosure shall continue to apply to such Subsequent Owner.

(b) Replacement Agreement. If the Agreement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Seller, then, Collateral Agent or a Subsequent Owner shall certify in writing to Buyer, not more than ninety (90) days after the date of such termination or rejection, as applicable, occurs, that it meets the requirements of a Subsequent Owner and will perform the obligations of Seller as and to the extent required under the Agreement. Following receipt of such certification and at the request of Collateral Agent, Buyer will execute and deliver to Collateral Agent or Subsequent Owner a new agreement for the balance of the remaining term under the Agreement containing the same conditions, agreements, terms, provisions and limitations as the Agreement.

1.4 Buyer Cure Rights under the Financing Agreement. Under the Financing Agreement, Collateral Agent shall agree not to exercise remedies under the Financing Agreement or any related collateral documents that could preclude Buyer from exercising its purchase option pursuant to Section 1.5 below until Buyer has been given: (a) if such default thereunder is a monetary default, thirty (30) days after the expiration of all cure periods available to Seller under the Financing Agreement, or (b) if such default thereunder is a nonmonetary default, sixty (60) days after the expiration of all cure periods available to Seller under the Financing Agreement, so long as, in the case of this clause (b), Buyer reasonably demonstrates that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such default; and the effect of any such cure by Buyer shall be as if Seller had cured the applicable default within the cure period afforded Seller under the Financing Agreement, including cessation of exercise of remedies by Collateral Agent. Upon any payment or cure by Buyer relating to such a default by Seller, the amounts expended by Buyer to provide such cure, including any defaulted payment and interest thereon at the Interest Rate, and all other payments made and expenses incurred by Buyer in providing such cure shall be applied either (i) in reduction of the price for the delivered Facility Energy payable by Buyer as provided under the Agreement, *provided* that the reduction of the price for the delivered Facility Energy shall not result in an inability of Seller to pay required debt service in connection with the Facility Debt (as defined below), or (ii) in the event of the purchase of the Facility by Buyer under Section 1.5 hereof, the purchase price shall be reduced by such amounts expended to provide such cure, *provided* that the purchase price shall not be less than the

Facility Debt (as defined below). For purposes of this Consent, "***Facility Debt***" shall have the meaning set forth in the Agreement, except that (i) the reference to the obligations of "Seller" thereunder shall be deemed to refer to the obligations of "Borrower," as the counterparty under the Financing Agreement and (ii) any debt of Borrower to the lenders under the Financing Agreement shall be deemed "Facility Debt". Upon the request of Buyer, Collateral Agent can send a written notice of the amount of Facility Debt that is needed to be received by Collateral Agent pursuant to the Financing Agreement.

1.5 Buyer's Purchase in Lieu of Foreclosure. In the event of any default by Seller under the Financing Agreement that has not been cured as provided hereunder or thereunder, prior to taking any action, whether judicial or non-judicial, to foreclose upon and sell the Facility or the Assigned Interests (in either case, a "***Foreclosure Sale***") pursuant to the Lender Collateral Documents, or prior to taking a deed in lieu of foreclosure, Collateral Agent shall, concurrent with any statutory notice required to be delivered to Seller, give notice in writing to Buyer not less than ninety (90) days prior to the date of such Foreclosure Sale or taking of a deed in lieu of foreclosure in the form of Exhibit A hereto containing the information specified therein (the "***Foreclosure Notice***").

(a) Upon receipt by Buyer of a Foreclosure Notice, Buyer shall have the right, at its option, to purchase the Facility from Seller in lieu of foreclosure as set forth in this Section 1.5. In the event that, within thirty (30) days following Buyer's receipt of such Foreclosure Notice, Buyer furnishes written notice to Collateral Agent that it will (concurrent with and subject to the closing of a bond financing by Buyer) exercise its option to purchase the Facility, which notice shall be in the form of, and containing the information specified in, Exhibit B hereto (the "Purchase Notice"), including setting forth the date of such purchase (which shall be within ninety (90) days following the date of Buyer's notice to Collateral Agent in the form of Exhibit B, which date may be reasonably extended by Buyer for up to an additional fifteen (15) days in order to close the bond financing), Buyer shall purchase the Facility from Seller as hereinafter provided. The purchase price of the Facility shall be paid by the Buyer to the account designated by Collateral Agent and shall be equal to the amount, measured as of the date of such payment, of the Facility Debt. In consideration of such payment, Collateral Agent shall, upon the closing therefor, release of record all of the liens and security interests under the Lender Collateral Documents.

(b) If Buyer believes that the purchase of the Facility will not take place within such ninety (90) day period, and, prior to the end of such ninety (90) day period provides notice to Collateral Agent in the form of Exhibit C, then the Foreclosure Sale (or, as applicable, the taking of a deed in lieu of foreclosure) shall not be held and Buyer shall, within ten (10) days after the end of such ninety (90) day period, purchase from Collateral Agent all of their right, title and interest in, to and under the Financing Agreement and the Lender Collateral Documents, free and clear of all Collateral Agent liens, claims and encumbrances. Upon such a purchase by Buyer, Collateral Agent agrees to cause the transfer, sale and assignment of all of the right, title and interest of Collateral Agent in, to and under the Financing Agreement, related promissory notes, and the Lender Collateral Documents to be made to Buyer (or, if and to the extent designated by Buyer, to a member of Buyer that is a purchaser from Buyer of Energy produced by the Facility (a "***Member***")) upon the payment by Buyer or such Member to Collateral Agent of the amount of the Facility Debt measured as of the date of such purchase.

(c) If Buyer has not provided Collateral Agent a notice in the form of Exhibit C prior to the end of such ninety (90) day period after the Foreclosure Notice, then Collateral Agent may effect the Foreclosure Sale or take a deed in lieu of foreclosure at any time after the end of such ninety (90) day period.].

1.6 Foreclosure Sale. In the event a Foreclosure Sale under the Lender Collateral Documents shall take place, Collateral Agent may sell the Assigned Interests pursuant to such Foreclosure Sale to any Qualified Transferee, and Seller waives, to the extent permitted by law, all rights of redemption, stay or appraisal; *provided*, *however*, Buyer or any Member shall have the right to bid at such Foreclosure Sale.

1.7 Third Party Beneficiary. No action of Buyer taken pursuant to the exercise of its rights as provided in this Consent shall be deemed to be a waiver of any right accruing to Buyer on account of the occurrence of any matter which constitutes a default or a breach of Seller's obligations under the Financing Agreement.

1.8 No Assignment. Buyer agrees that it shall not, without the prior written joint consent of Seller and Collateral Agent (such consent to not be unreasonably withheld, conditioned or delayed) sell, assign or transfer any of its rights under the Agreement other than in accordance with the Agreement. Collateral Agent shall be deemed to have consented to such sale, assignment or transfer should it fail to respond within ninety (90) days after the date of the notice from Buyer.

1.9 Limitation of Liability.

(a) Seller agrees that it shall indemnify and hold Buyer harmless from any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any third-party direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transactions related to the Financing Agreement or any of the Lender Collateral Documents, or this Consent.

(b) Collateral Agent or any Subsequent Owner shall expressly assume in writing Seller's obligations under the Agreement and agree to comply with the terms of the Agreement if Collateral Agent forecloses on the Facility or the Assigned Interests or takes a "deed in lieu of foreclosure", and shall not have any liability under the Agreement unless and until such assumption. Collateral Agent agrees that, except to the extent expressly provided hereunder, in no event shall Buyer be liable to Collateral Agent or any Subsequent Owner for any claims, losses, expenses or damages whatsoever under the Agreement other than liability Buyer may have to Seller under the Agreement. In the event a Subsequent Owner elects to perform Seller's obligations under the Agreement, Buyer's rights under the Agreement shall survive any Foreclosure Sale.

2. Payments under the Agreement. Without limiting the rights of Buyer under the Agreement, Buyer shall pay any amounts owed in the manner and when required under the Agreement directly to the accounts specified below or otherwise designated by Collateral Agent to Buyer in writing. From and after such time as an entity qualifies as a Subsequent Owner, Buyer shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner. Seller hereby directs Buyer, and Buyer agrees, to make all payments and amounts Buyer is

obligated to pay to Seller under the Agreement, which payments shall satisfy any such payment obligations of Buyer to Seller in full and complete satisfaction of Buyer's obligations to Seller under the Agreement, to the following account:

Bank Name: _____
Account Number: _____
ABA Number: _____
Account Name: [_____]

Collateral Agent and Seller agree that any change in payment notification shall become effective within thirty (30) days after receipt by Buyer of written notice thereof in accordance with this Consent. Buyer shall have no liability to Seller or Collateral Agent (or their successors and assigns) for making payments due or to become due under the Agreement to Lender or for failure to direct such payments to Collateral Agent rather than Seller.

3. Acknowledgements; Representations and Warranties.

(a) Seller and Collateral Agent acknowledge that Buyer has not made and hereby makes no representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Lender Collateral Documents (the "***Collateral***") and Collateral Agent acknowledges that it has not relied upon any such representations of Buyer. Collateral Agent acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Collateral.

(b) Except as otherwise expressly provided herein, Collateral Agent acknowledges that Buyer shall not have any contractual obligations to Collateral Agent, and Collateral Agent acknowledges that it has not relied upon any representations of Buyer in connection with its lending arrangements with Seller, other than the representations of Buyer set forth in this Consent and the representations of Buyer set forth in the estoppel certificate that Buyer will deliver pursuant to this Consent.

(c) Except in the event of Buyer's breach of this Consent, Seller and Collateral Agent acknowledge that Buyer shall have no liability to Seller or Collateral Agent resulting from or related to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Collateral Agent therein.

(d) Seller and Collateral Agent each agree that Buyer shall at all times have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Seller under the Agreement amounts owing to Buyer by Seller under the Agreement in accordance with the Agreement.

(e) Each of Buyer, Seller and Collateral Agent represents and warrants that it is duly authorized to enter into and perform its obligations under this Consent.

(f) Seller represents and warrants to Buyer that the rights of Buyer to exercise its cure rights and other rights and remedies hereunder, including to purchase the Facility in

accordance with the provisions of Section 1.5 of this Consent, do not and will not conflict with the Financing Agreement, and are permitted by the Financing Agreement, the Lender Collateral Documents, and any related agreements and documents securing Seller's performance under the Financing Agreement.

(g) Collateral Agent shall obtain Buyer's consent (such consent not to be unreasonably withheld) prior to any transfer by Collateral Agent of the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement, which shall be to a Qualified Transferee.

4. Miscellaneous.

4.1 Governing Law; Submission to Jurisdiction.

(a) This Consent shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

(b) All litigation arising out of, or relating to this Consent, 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.

4.2 No Amendment of Agreement. This Consent (in the form attached to the Agreement as of the Effective Date) shall not be deemed to be an amendment to the Agreement.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

4.4 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Buyer and Collateral Agent and after the initial funding by any Tax Equity Investor, such Tax Equity Investor.

4.5 Successors and Assigns. This Consent shall bind and benefit Buyer, Seller and Collateral Agent, and their respective successors and permitted assigns.

4.6 Attorney's Fees. Seller shall reimburse Buyer for all actual and documented reasonable costs and expenses incurred by Buyer in connection with the facilitation of Seller's collateral assignment or pledge of the Agreement, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller or any Collateral Agent.

4.7 Representation by Counsel. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Consent.

4.8 Estoppel Certificate. Buyer agrees to deliver to the Tax Equity Investors and Collateral Agent a customary estoppel certificate substantially in the form of Exhibit D from time to time, including on the date of delivery of this Consent, in connection with the fundings by the Tax Equity Investors and in connection with the achievement of Commercial Operation of the Facility following receipt of a written request therefor from Seller.

4.9 Notices. Any communications between the Parties or notices provided herein to be given shall be given to the following addresses:

If to Seller:

[Seller]
c/o [_____]

If to Buyer:

Southern California. Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Facsimile: (626) 793-9461
Telephone: (626) 793-9364
Attention: Executive Director

If to Collateral Agent:

[_____]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by prepaid telegram or by facsimile. Any Party may change its address for notice hereunder by giving written notice of such change to the other Parties.

4.10 [Termination of Collateral Documents and Consent. Seller and Collateral Agent agree that upon the termination of the Lender Collateral Documents on the Term Conversion Date (as defined in the Recitals), the only remaining collateral security of Collateral Agent securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of Collateral Agent in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. Seller agrees to deliver notice of the occurrence of the Term Conversion Date to Buyer (with a copy to Collateral Agent) promptly but in no event more than ten (10) days after such Term Conversion Date. The Parties agree that, as of such date, any rights, duties or obligations arising hereunder shall terminate and no longer be applicable; *provided*, that Sections 1.9(a), 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, and 4.10 and the definition of "Facility Debt" in Section 1.1 shall survive the termination of this Consent.]

4.11 [Tax Equity Investor Accession. Each of Buyer, Collateral Agent, Seller and the Tax Equity Investors hereby agree as follows:

(a) Effective as of (i) the date of the initial funding by any Tax Equity Investor, (ii) the execution by the Tax Equity Investor of an accession agreement to this Consent reasonably acceptable to the other Parties hereto and (iii) the earlier to occur of (1) the date that the obligations under the Financing Agreement are repaid in full; and (2) the Term Conversion Date:

I. The rights of Collateral Agent under Section 1 hereof and the payment direction in Section 2 hereof will terminate.

II. Buyer will not terminate the Agreement or suspend performance of its services under the Agreement on account of any Default (as defined under the Agreement) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) thirty (30) days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the Agreement, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer.

(b) The address of the Tax Equity Investors for purposes of all notices and other communications shall be as set forth in the applicable accession agreement.]

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Consent and Estoppel Agreement to be duly executed and delivered as of the date first above written.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President

Date: _____

Attest: _____
[_____]
Assistant Secretary

[SELLER]

By: _____
Name: [_____]
Title: [_____]

[Collateral Agent]

By: _____
Name: [_____]
Title: [_____]

EXHIBIT A
to Consent and Estoppel Agreement

FORM OF FORECLOSURE NOTICE
[Letterhead of Collateral Agent]

[Insert date]

Via Certified Mail, Return Receipt Requested

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attn: Executive Director

Re: **[]**

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("***Consent***") dated as of _____, 20__, among Southern California Public Power Authority ("***Buyer***"), _____, as collateral agent ("***Collateral Agent***") and [Seller] ("***Seller***"). This is a Foreclosure Notice, as defined in the Consent. Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

As of the date hereof, the following amounts are due and owing by Seller under the Financing Agreement:

Principal amount of loans:
Accrued Interest:
Reimbursable Amounts
Fees:

As of the date hereof, interest is accruing at the rate of ____% per annum *[Insert if applicable*: and fees are accruing at the rate of _____% per annum]. This interest rate will apply until *[insert date which is end of current interest period]*, from which time the interest rate may be higher or lower. A default rate of interest equal to [2[6]]% above the otherwise applicable rate *[does/does not]* currently apply *[If does not currently apply, add*: but may be applied at any time]. *[If applicable, state*: The principal amount of loans shown above does not reflect the entire loan commitment under the Financing Agreement. Additional loans may be made, with or without the Seller's consent, and such additional loans will accrue interest as provided in the Financing Agreement.]

6 **NTD**: Subject to applicable Financing Agreement.

An Event of Default, as defined in the Financing Agreement, has occurred and is continuing. Collateral Agent anticipates that it may foreclose upon the Assigned Interests or take a deed in lieu of foreclosure on a date estimated to be *[insert day no less than ninety (90) days from the date of notice]*. Such date may be modified as permitted by law, but will in no event be prior to ninety (90) days after the date hereof.

Very truly yours,

[_____]

EXHIBIT B
to Consent and Estoppel Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SCPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested

[_____]
[Address]
[City, State ZIP]
Attn: [_____]

Re:

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("***Consent***"), dated as of _____, 20__, among Southern California Public Power Authority ("***Buyer***"), _____, as collateral agent ("***Collateral Agent***") and [Seller] ("***Seller***"). This is a Purchase Notice, as defined in the Consent. Capitalized terms used and not defined herein have the respective meanings given in the Consent.

We have received your foreclosure Notice, dated [insert date of Foreclosure Notice]. By this Purchase Notice, we hereby notify Collateral Agent that we will exercise our option and purchase the Facility pursuant to our rights under Section 1.5(a) of the Consent no later than ninety (90) days from the date of the Foreclosure Notice, and upon consummation of such purchase, pay to Collateral Agent, for the account of Collateral Agent, the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President

Date: _____

Attest: _____
[_____]
Assistant Secretary

EXHIBIT C
to Consent and Estoppel Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SCPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested

[_____]
[Address]
[City, State ZIP]
Attn: [_____]

Re:

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("***Consent***"), dated as of _____, 20__, among Southern California Public Power Authority ("***Buyer***"), _____, as collateral agent ("***Collateral Agent***") and [Seller] ("***Seller***"). Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

We have received your Foreclosure Notice, dated ***[insert date of Foreclosure Notice]***. By this notice, we hereby notify Collateral Agent that we believe that the purchase of the Facility pursuant to Section 1.5(b) of the Consent will not take place within the ninety (90) day period following our receipt of such Foreclosure Notice. We will, within ten (10) days after the end of such ninety (90) day period, purchase from Collateral Agent all of their right, title and interest in, to and under the Financing Agreement, related promissory notes, and Lender Collateral Documents, for a price equal to the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President

Date: _____

Attest: _____
[_____]
Assistant Secretary

EXHIBIT D
to Consent and Estoppel Agreement

[FORM OF] PPA ESTOPPEL CERTIFICATE

[Date[7]]

Reference is made to that certain Power Purchase Agreement dated as of [___], 20[ ] (the "***Agreement***"), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("***Buyer***"; *provided*, that in no event shall the term "Buyer" refer to any of the members of Buyer, and the term "***Buyer's knowledge***" as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and [Seller, a limited liability company] ("***Seller***"). Terms used herein but not defined herein have the same meanings as in the Agreement.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the Agreement, as amended, attached as [Exhibit A], constitutes a true and complete copy of the PPA.

2. The Agreement is in full force and effect and has not been modified or amended in any way [since [_____ __, 20[_]], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Estoppel Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [___], 20[ ].

3. Buyer has not transferred or assigned its interest in the Agreement.

4. Buyer is not in default under the Agreement nor has Buyer breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the Agreement or that would give Seller the right to terminate the Agreement. To Buyer's knowledge, Seller is not in default under the Agreement nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the Agreement and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the Agreement or that would allow Buyer to terminate the Agreement.

5. All representations made by Buyer in the Agreement were true and correct as of the Effective Date of the Agreement and continue to be true and correct.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the Agreement has occurred and is continuing.

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7 To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the Agreement.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the Agreement. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due and owing[, except for those under dispute as described in Schedule I hereto[8]], under the Agreement by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [____], 20[__].

11. The Installed Capacity of the Facility as of the Commercial Operation Date is [ ] MW. [9]]

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Name:
Title:

8 To include if applicable.

9 Bracketed language in 10 and 11 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

[Schedule I]

SCHEDULE I TO [FORM] OF PPA ESTOPPEL CERTIFICATE[10]

10 To include if applicable.

EXHIBIT AA

STORAGE CAPACITY TESTS

[To be completed by the Parties]

EXHIBIT AB

STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, as may be extended until Buyer has had a reasonable time to review any necessary data provided by Seller, Buyer shall calculate the "**Monthly Storage Capacity Availability**" for each month in the current Contract Year using the formula set forth below:

$$\text{Monthly Storage Capacity Availability (\%)} = \frac{\text{Total Monthly Calculation Intervals - Unavailable Calculation Intervals}}{\text{Total Monthly Calculation Intervals}}$$

"**Calculation Interval**" or "**C.I.**" means each hour in the applicable month.

"**Total Monthly Calculation Intervals**" means the total number of Calculation Intervals in the applicable month.

"**Unavailable Calculation Intervals**" means the sum of Calculation Intervals in the applicable month during which the Storage Facility was unavailable to deliver:

(i) Available Effective Storage Capacity in an amount equal to the Effective Storage Capacity; or

(ii) the Available Storage Capability in an amount equal to the Effective Storage Capacity times four (4) hours; or

(iii) the guarantees (including Ancillary Services) in accordance with Agreement Section 4.8(d).

When calculating Unavailable Calculation Intervals any Calculation Interval that coincides with an Excused Availability Event shall be excluded from the sum of Unavailable Calculation Intervals.

"**Available Effective Storage Capacity**", which shall be calculated as the available capacity, in MW, from Storage Facility (including the system inverters) that can receive Charging Energy from both the Generating Facility and the CAISO Grid, store Charging Energy, and deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on operating conditions pursuant to the manufacturer's guidelines).

"**Available Storage Capability**", which shall be calculated as the sum of (i) + (ii) (taking into account the SOC at the time of calculation):

(i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility (including the system inverters) is available to be charged from both the Generating Facility and the grid (calculated as the available battery charging capability (in MWh) to receive and store Charging Energy from both the Generating Facility and the CAISO Grid in the applicable Calculation Interval x the Battery Charging Factor); *provided that*, when measuring ability to receiving Charging Energy from the Generating Facility, such availability shall be adjusted based on percentage of the Installed Generating Facility Capacity that is reasonably available to generate Energy in such Calculation Interval (due to time-of-day solar irradiance); and

(ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged to the Delivery Point (calculated as the available battery discharging capability (in MWh) to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor).

"**Excused Availability Event**" means a Force Majeure Event, Buyer Dispatched Test, or Curtailment Order.

(b) The Available Effective Storage Capacity and Available Storage Capability in the above calculations shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of Available Effective Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to charge, store, and discharge Energy between the Storage Facility and the Delivery Point, as applicable. Any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity as measured to the Delivery Point is less than [____] MW charging and [____] MW discharging at 50°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.

EXHIBIT AC

OPERATING RESTRICTIONS

The Facility shall be subject to the following Operating Restrictions. The Parties may develop and finalize additional mutually agreed upon Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions may not be more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing in Buyer's sole discretion.

I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	**[XX/XX/20XX]**	
Technology:	**[Technology]**	
Storage Unit Name:	**[Unit Name and Number]**	
A. Contract Capacity		
Guaranteed Storage Capacity (MW):	[X]	
Installed Storage Capacity (MW):	[X]	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	[X]	
Maximum Storage Level (MWh):	[X]	
Minimum Storage Level (MWh):	[X]	
Time to Full Charge Guarantee (MWh):	[X]	
Maximum Charging Capacity Guarantee (MW):	[X]	
Maximum Discharging Capacity Guarantee (MW):	[X]	
Minimum Charging Capacity Guarantee (MW):	[X]	
Minimum Discharging Capacity Guarantee (MW):	[X]	
Maximum State of Charge during Charging Guarantee:	[X]	
Minimum State of Charge during Discharging Guarantee:	[X]	
Annual Cycle Limit:	[X]	
Daily Dispatch Limits:	[X]	
Response Time Guarantee:	[X]	
C. Charge and Discharge Rates		
Mode	**Maximum (MW)**	**Ramp Rate (MW/s) Description**
Energy (Charge) Guarantee:	[X]	[Charging mode]
Energy (Discharge) Guarantee:	[X]	[Discharging mode]
D. Ancillary Services		
Voltage Support:	[X]	
Spinning Reserve:	[X]	
Non-spinning Reserve:	[X]	
Regulation Up:	[X]	
Regulation Down:	[X]	
Black Start:	[X]	
Other [Specify]:	[X]	

II. GENERATING FACILITY OPERATING RESTRICTIONS

1. XXXX
2. XXXX

EXHIBIT AD

APPROVED VENDORS

[To be completed by the Parties]