ATTACHMENT D-1
TO
Q1/Q2 2026 Renewable Energy Resources and Energy Storage Solutions RFP
SCPPA PRO FORMA PPA (LADWP BAA)

POWER PURCHASE AGREEMENT
BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

[SELLER]

DATED AS OF [_____, 20__]

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APPENDICES

POWER PURCHASE AGREEMENT

[PARTIES]

This Power Purchase Agreement ("***Agreement***") is entered into as of [_____, 20__] [SCPPA to insert date when it executes the Agreement after SCPPA Board approval], (the "***Effective Date***") by and between the Southern California Public Power Authority ("***Buyer***" or "***SCPPA***"), a public entity and joint power authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Gov. Code Section 6500, *et. seq*., and [_____] ("***Seller***"), a [limited liability company/partnership/corporation] organized and existing under the laws of the State of [_____]. Each of Buyer and Seller is referred to individually in this Agreement as a "***Party***," and jointly as the "***Parties***."

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 to acquire renewable energy resources;

WHEREAS, on [date], [Seller entity] responded on behalf of Seller to Buyer's request for proposals 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, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

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

"**Acceptable Form of Performance Assurance**" means a letter of credit issued by a Qualified Issuer, substantially in the form attached hereto as Appendix F, which will guarantee Seller's obligations under this Agreement.

"**AC**" and "**ac**" mean alternating current.

"**Access Failure**" has the meaning set forth in Section 4.7(c).

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

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is legally responsible for or is a director or officer of such Person or of an Affiliate of such Person.

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

"**Agreement Term**" has the meaning set forth in Section 2.3.

"**Ancillary Documents**" means the Option Agreement, all agreements and other documents included in the Performance Assurance and all other instruments, agreements, certificates and documents executed or delivered by or on behalf of Buyer or any Seller Party pursuant to or in connection with any thereof or this Agreement.

"**ASCE**" means American Society of Civil Engineers and any successor thereto.

"**ASME**" means American Society of Mechanical Engineers and any successor thereto.

"**Assumed Daily Deliveries**" has the meaning set forth in Section 13.3(c).

"**ASTM**" means ASTM International and any successor thereto.

"**Approvals**" means each Participating Member's approval, by way of such Participating Member's required board and city council approvals (each to the extent applicable) associated with this Agreement, and the related executions of each of the respective Participating Member Agreements.

"**Approvals Date**" means the date on which all required Approvals have been obtained, and written notice thereof is delivered by Buyer to Seller.

"**Approvals Deadline**" means the date that is eight (8) months after the Effective Date (as may be extended by the Parties' mutual agreement in writing).

["**Attaining Balancing Authority**" means LADWP in its capacity as Balancing Authority.

"**Attaining Balancing Authority Area**" means the Balancing Authority Area of LADWP.]

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

"**Authorized Representative**" means, with respect to each Party, the Person designated as such Party's authorized representative pursuant to Section 14.1.

"**AWS**" means American Welding Society and any successor thereto.

"**Balancing Authority**" means LADWP acting as the responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports interconnection frequency in real time.

"**Balancing Authority Area**" means the collection of generation, transmission, and loads within the metered boundaries of the area in which the Balancing Authority maintains load-resource balance.

"**Bankruptcy**" means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case, action or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain unstayed or undismissed for sixty (60) days.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute thereto.

"**Brown Act**" has the meaning set forth in Section 14.21(c).

"**Business Day**" means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California, or New York, New York. 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 in the preamble of this Agreement.

"**Buyer's Agent**" means such Person as Buyer may designate from time to time to perform certain tasks acting as an agent on Buyer's behalf, including LADWP.

"**Buyer's Members**" means any member of Buyer that has entered into the Joint Powers Agreement.

"**Buyer's Check Meters**" has the meaning set forth in Section 11.6(e).

"**CAISO**" means the California Independent System Operator and any successor thereto.

"**Cal-OSHA**" means California Occupational Safety and Health Administration and any successor thereto.

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

"**CAP**" has the meaning set forth in Appendix AC.

"**Capacity Rights**" means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, associated attributes or reserves, and all ancillary products or any of the foregoing as may in the future be defined by the Balancing Authority, or, if applicable, the CAISO, or any other balancing authority, reliability entity or Governmental Authority associated with the electric generating capability of the Facility, including, if applicable, any local capacity requirements and the right to resell such rights, but excluding Tax-related benefits available to Seller.

"**CARB**" means the California Air Resources Board, and any successor agency thereto.

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

"**CEC Certified**" or "**CEC Certification**" means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with the RPS Law.

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

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq*., as amended from time to time, the rules and regulations promulgated thereunder, including the CEQA Guidelines (Title 14, Division 6, Chapter 3 of the California Code of Regulations), and any successor statute and regulations.

"**CERCLA**" means the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §§ 9601, *et seq*.).

"**Certification Eligibility Date**" means the RPS eligibility date specified in the certificate issued by the CEC approving Seller's CEC Certification application.

"**Change in Control**" means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following:

(i) a merger or consolidation of Seller or any Upstream Equity Owner with or into any other Person or any other reorganization in which the members of Seller or Upstream Equity Owner immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger or reorganization;

(ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or Upstream Equity Owner, or the power to control the management and policies of Seller or Upstream Equity Owner, is transferred to another Person;

(iii) a sale, lease or other disposition of all or substantially all of the assets of Seller or any Upstream Equity Owner;

(iv) the dissolution or liquidation of Seller or Upstream Equity Owner; or

(v) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing;

provided, however, that a Change in Control shall not include any transaction or series of transactions in which a [membership][equity] interest in Seller or Upstream Equity Owner is issued or transferred to another Person solely for the purpose of a Tax Financing.

"**Closing**" has the meaning set forth in the Option Agreement.

"**Closing Date**" has the meaning set forth in the Option Agreement.

"**Commercial Operation**" means, with respect to the Facility, that (i) Seller has demonstrated, and the Independent Engineer has confirmed in writing, that the conditions set forth in the Independent Engineer certificate in the form of Appendix P and attached to Appendix O have been met with respect to the Facility, and (ii) Seller has demonstrated, to the reasonable satisfaction of Buyer, that any conditions not certified to by the Independent Engineer on Appendix O have been met with respect to the Facility, and in the case of both (i) and (ii), the certificates associated therewith have been (a) accepted by Buyer and Buyer has provided notice of such acceptance to Seller confirming the Commercial Operation Date, or (b) deemed accepted by Buyer in accordance with Section 3.2.

"**Commercial Operation Date**" means the date on which Buyer's Authorized Representative accepts a certificate of Commercial Operation in the form attached in Appendix O from Seller.

"**Compensable Curtailments**" has the meaning set forth in Section 6.8(a).

"**Compliance Requirements**" means the standards required to be EPS Compliant, RPS Compliant, and CEC Certified, comply with CEC Performance Standards, and meet all applicable CEC requirements (including the then-applicable "Long-Term Procurement Requirement" as described in Section 3204(d) of the California Code of Regulations (Cal. Code Regs., tit. 20, § 3204)).

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

"**Consent and Agreement**" has the meaning set forth in Section 13.4 and shall be substantially in the form attached as Appendix Z.

"**Construction Commencement Milestone**" means the date on which Seller demonstrates to the reasonable satisfaction of Buyer's Authorized Representative that (a) Seller's general contractor has commenced installation and construction of the Facility pursuant to Seller's issuance of NTP, (b) all Permits listed in Appendix C have been obtained and are final and are in full force and effect, (c) the diagrams contained in Appendices V and W have been updated, and (d) Seller has provided confirmation, including supporting documentation, that Seller has Site Control, and that Seller has provided Buyer (i) a Q/A and Q/C checklist under Appendix I (ii) a gantt chart at least sixty (60) days prior to the NTP that consists of a schedule reflecting estimated construction and testing activities and completion dates from NTP to Commercial Operation Date, (iii) proof of Builder's Risk insurance in accordance with Appendix G, and (iv) an assumed Transmission Line Loss Factor value.

"**Contract Capacity**" means [XXX] MW (ac), as measured at the Point of Delivery, which is the maximum in any one hour that Buyer is obligated to accept from the Facility under this Agreement.

"**Contract Price(s)**" means each of the applicable prices set forth in Appendix 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.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies, or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Costs**" has the meaning set forth in Section 13.3(f).

"**CPRA**" has the meaning set forth in Section 14.21(c).

"**CPUC**" means the California Public Utilities Commission and any successor thereto.

"**CPUC Performance Standard**" means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, or for which a load-serving entity and not a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CPUC or other Governmental Authority under the EPS Law.

"**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.

"**CRO**" has the meaning set forth in Section 14.25(h).

"**Cure Period**" has the meaning set forth in Section 9.1.

"**Day Ahead Schedule**" has the meaning set forth in Section 4.4(e).

"**DBE**" has the meaning set forth in Section 14.25(c).

"**DCS**" has the meaning set forth in Section 4.6(a).

"**DVBE**" has the meaning set forth in Section 14.25(c).

"**Deemed Delivered Energy**" has the meaning set forth in Section 6.8(b).

"**Default**" has the meaning set forth in Section 13.1.

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

"**Delivered Energy**" means, for any period, the MWh of Facility Energy delivered by Seller and received by Buyer at the Point of Delivery as measured by the Revenue Meter, as such measurements are adjusted using the Transmission Line Loss Factor.

"**Delivery Term**" has the meaning set forth in Section 2.3.

"**Development Security**" has the meaning set forth in Section 5.6(a).

"**Disposition**" has the meaning set forth in Section 14.22.

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

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

"**DNP**" has the meaning set forth in Section 4.4(b).

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

"**DVBE**" has the meaning set forth in Section 14.25(c).

"**Early Termination Date**" has the meaning set forth in Section 13.3(a).

"**EBE**" has the meaning set forth in Section 14.25(c).

"**ECC**" means the LADWP Energy Control Center.

"**EDAM**" means the CAISO's Extended Day-Ahead Market, or such market as expands or replaces the same.

"**Effective Date**" has the meaning set forth in the preamble of this Agreement.

"**EIM**" means the CAISO's Western Energy Imbalance Market or a successor market.

"**Electric Metering Devices**" means all meters, metering equipment and data processing equipment conforming to the requirements set forth in Section 11.6 and used to measure, record or transmit data relating to the Energy output from the Facility as depicted in Appendix W. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

"**Emergency Stop**" has the meaning set forth in Appendix AB.

"**Energy**" means electrical energy.

"**Energy Information Assessments**" means Annual Electric Power Industry Report (Form EIA-861) administered by U.S. Energy Information Administration.

"**Enforceability Opinion**" means an executed original of a written legal opinion of [law firm], counsel for Seller, or other outside counsel of Seller reasonably acceptable to Buyer, addressed to Buyer and in form and substance 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, dated as of the date such opinion is delivered to Buyer, and that the execution and delivery of such agreements shall not require any additional consent and shall not result in a breach of any material documents.

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

"**Environmental Attribute(s)**" means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated

or validated that are (A) at any time recognized or deemed of value (or both) by either Party, applicable laws, or any voluntary or mandatory program of any Governmental Authority or other Person and (B) attributable to (i) generation capability or generation by the Facility during the Agreement Term or Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement or avoidance of any amount of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of any Requirements of Law concerned with emissions or avoided emissions of nitrogen oxides, sulfur oxides, carbon dioxide, carbon monoxide, methane, hydrofluorocabons, perfluorocarbons, sulfur hexafluoride, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "***UNFCCC***"), the Kyoto Protocol to the UNFCCC, the principles identified in the Paris Agreement of the UNFCCC that took effect in 2016, the Affordable Clean Energy Rule promulgated by the EPA, California's greenhouse gas legislation (including RPS Law and California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the CARB or any successor regulations thereto) or any similar international, federal, state or local program or crediting "early action" with a view thereto, laws or regulations involving or administered by the CAMD and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility. For the avoidance of doubt, Environmental Attributes exclude: (i) PTCs, ITCs and other local, state or federal tax credits providing a tax benefit to Seller based on ownership of the Facility or energy production therefrom, including the [wind PTC] [solar PTC or ITC] that may be available to Seller with respect to the Facility under Tax Code §[wind 45] [solar 45 or §48], and (ii) depreciation and other tax benefits arising from ownership or operation of the Facility.

"**Environmental Laws**" means any federal, state or local laws (including common law), statutes, ordinances, rules, regulations, binding orders, injunctions or judgments relating to the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), protection of human health as it relates to the environment, or the presence of or release or threatened release of any Hazardous Materials on, under or about the Real Property, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any "hazardous substance" (as that term is defined in CERCLA Section 101(14)), including, but not limited to, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (33 U.S.C. §§ 1251, *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136, *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001, *et* seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601, *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651, *et seq.*), and the regulations promulgated pursuant to each of the foregoing, and any such applicable state or local statutes or ordinances, and the regulations promulgated pursuant thereto.

"**EPA**" means the United States Environmental Protection Agency and any successor agency.

"**EPS Compliant**" means, when used with respect to the Facility or any other facility at any time, that the Facility or other facility, as applicable, satisfies both the CPUC Performance Standard and the CEC Performance Standard in effect at the time; *provided,* if it is impossible for the Facility or facility, as applicable, to satisfy both the CPUC Performance Standard and the CEC Performance Standard in effect at any time, the Facility or 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

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.

"**e-tag**" has the meaning set forth in Section 7.1.

"**Excess Energy**" means, subject to Section 9.2, the portion of the Delivered Energy and Deemed Delivered Energy for any Contract Year that is (i) Facility Energy and (ii) in excess of [XX]% of the Expected Annual Generation.

"**Expected Annual Generation**" means the MWh per year as set forth in Appendix U.

["**Extension Term**" has the meaning set forth in Section 2.3.]

"**Facility**" means the [_____] powered electric generating facility, including all property interests and related transmission and other facilities, described in Appendix B.

"**Facility Assets**" has the meaning set forth in [Exhibit 1.1] of the Option Agreement.

"**Facility Cost**" means, measured as of the applicable measurement date, the aggregate amount of all costs and expenses incurred by Seller for developing, designing, engineering, equipping, procuring, constructing, installing, starting up and testing the Facility, including (a) the cost of all labor, services, materials, supplies, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (b) the cost of acquiring the leasehold interest and any other property, easement or other interest in the Site, (c) the cost of acquiring the Permits for the Facility and (d) the cost of establishing a spare parts inventory for the Facility, if any, net of revenue from Startup and Test Energy.

"**Facility Debt**" means, measured as of the applicable measurement date, any 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, (d) swap or interest rate hedging breakage costs and (e) any claims or interest due with respect to any of the foregoing. Facility Debt does not include any Tax Financing or the indebtedness of any Seller Affiliate for which Seller has no liability.

"**Facility Energy**" means Energy generated by the Facility, less Station Service and parasitic load [, Onsite Load not separately-metered], and measured by the Revenue Meter.

"**Facility Lender**" means any lender(s) providing senior or subordinated construction, interim or long-term debt (including all back-leverage debt) or tax equity financing or tax credit transfer financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any Tax Financing or Sale Leaseback Financing or refinancing, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

"**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 agency thereto.

"**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.

"**Financing Agreement**" shall mean any credit agreement, loan agreement or similar agreement, to be executed between Seller and a Facility Lender.

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

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

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

"**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).

"**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**" has the meaning set forth in Section 13.3(f).

"**GCOD**" means the guaranteed commercial operation date, which is [XXX].

"**Generator Interconnection Agreement**" means that certain generator interconnection agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and Transmission Provider governing the terms and conditions of Seller's interconnection with the Transmission System and allowing for delivery of Facility Energy to the Point of Delivery.

"**Governmental Authority**" means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, other governmental, regulatory or administrative agency, court, commission, administration, department, board, other governmental subdivision, legislature, rulemaking board, tribunal, other governmental authority or any Person acting as a delegate or agent of any Governmental Authority.

"**Green Value**" consists of the market value of (i) avoided greenhouse gas emissions or credits associated with RPS Compliant Energy, and (ii) all other Environmental Attributes, without duplication, and avoided emissions-related attributes and benefits that would otherwise have been realized had Seller generated the Facility Energy, and shall be calculated as an amount equal to the time-weighted average of the prices of greenhouse gases and other Environmental Attributes (as published in commercial indices related to California energy markets) that would have been realized for each MWh of the Shortfall Energy, as applicable, provided, that if for any Contract

Year there does not exist a liquid trading market that is mutually agreeable to the Parties to determine such Green Value, the Green Value will be equal to the lesser of the replacement cost as reasonably determined by Buyer, but taking into account sources identified by Seller for the attributes described in clauses (i) and (ii) above, expressed in $/MWh or $[ ]/MWh, as applicable.

"**Guaranteed Delivered Energy**" means the amount of Delivered Energy guaranteed by Seller during each Contract Year (including the Initial Stub Year and the Final Stub Year), as set forth in Appendix U.

"**Guidebook**" means the most-recent Renewables Portfolio Standard Eligibility guidebook issued by the CEC, as amended from time to time, or its successor document.

"**Hazardous Materials**" means any substances, pollutants, contaminants, wastes, or materials listed, defined, or classified as hazardous, toxic, or radioactive pursuant to any applicable Environmental Law, including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive materials, hazardous wastes, toxic substances, or asbestos or any materials containing asbestos, and any other substance regulated, pursuant to, or the presence or exposure to which may form the basis for liability under any applicable Environmental Laws.

"**ICE**" has the meaning set forth in the definition of Market Price Index.

"**IEC**" has the meaning set forth in Appendix AB.

"**IEEE**" means Institute of Electrical and Electronics Engineers and any successor thereto.

"**Indemnified Liabilities**" has the meaning set forth in Section 14.19(a).

"**Indemnitee(s)**" has the meaning set forth in Section 14.19(a).

"**Independent Engineer**" means a California licensed engineer selected by Seller and reasonably acceptable to Buyer.

"**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.

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

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

"**International Trade Laws**" shall mean all laws, regulations and orders relating to imports as administered by U.S. Customs and Border Protection, and any other applicable customs and imports laws; exports

and trade sanctions pursuant to the International Traffic in Arms Regulations administered by the U.S. Department of State's Directorate of Defense Trade Controls, the Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security, and the U.S. Department of the Treasury's Office of Foreign Assets Control, and any other applicable exports and trade sanctions laws (including any laws or executive orders issued in the State of California); antiboycott matters administered by the U.S. Department of Commerce's Office of Antiboycott Compliance and the U.S. Department of the Treasury's Internal Revenue Service and any other applicable anti-boycott laws; anti-bribery and anti-corruption matters governed by the Foreign Corrupt Practices Act as enforced by the U.S. Department of Justice and the U.S. Securities and Exchange Commission, the UK Bribery Act, and any other applicable anti-bribery and anti-corruption laws; anti-money laundering matters pursuant primarily, but not exclusively, to the Money Laundering Control Act and the Bank Secrecy Act; and any other applicable laws, regulations and orders related to these areas.

"**Investment Tax Credit**" or "**ITC**" means the tax credit established pursuant to Section 48 of the Tax Code as in effect as of the Effective Date and as administered and interpreted under the applicable Requirements of Law.

"**ISA**" means Instrument Society of America and any successor thereto.

"**Joint Powers Agreement**" means the "Southern California Public Power Authority Joint Powers Agreement" entered into pursuant to the provisions of the Act among Buyer and Buyer's Members, dated as of November 1, 1980.

"**kW**" means kilowatt or kilowatts, as applicable.

"**Key Milestone(s)**" means the Construction Commencement Milestone and the GCOD each as further described in Appendix J.

"**LAAC**" has the meaning set forth in Section 14.25(b).

"**LADWP**" means the Los Angeles Department of Water and Power.

"**LAMC**" has the meaning set forth in Section 14.25(f).

"**Lease**" means the land lease agreements between Seller and (i) [_____], dated [_____, 20__], and (ii) [_____], dated [_____, 20__], and all other property holders leasing property rights for the Facility, each as amended, supplemented or otherwise modified from time to time.

"**Legal Opinion**" means an executed original of a written legal opinion of [*law firm*], counsel for Seller, or other outside counsel of Seller reasonably acceptable to Buyer, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among others, the enforceability and due authorization of this Agreement, and the other Ancillary Documents that are agreements between the Parties, dated as of the date such opinion is delivered in accordance with Section 2.1.

"**Lessor**" has the meaning set forth in the definition of "Sale Leaseback Financing."

"**LGBTBEs**" has the meaning set forth in Section 14.25(c).

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

"**Los Angeles City Attorney**" means LADWP's counsel as provided under Section 271 or any successor provision of the Charter of the City of Los Angeles.

"**Losses**" has the meaning set forth in Section 13.3(f).

"**LVRT**" has the meaning set forth in Appendix AB.

"**Major Maintenance Blockout**" has the meaning set forth in Section 4.8(a).

"**Market Price Index**" means the weighted average of the [On Peak Energy][Off Peak][Other Matching Profile]["Index" means…] (not including Environmental Attributes) prices for purposes of calculating (i) Shortfall Damages for each day within the year the Shortfall Energy occurred and (ii) the replacement price for each day within any applicable period in which the Facility does not meet the Compliance Requirements, each as published by the Intercontinental Exchange ("***ICE***") for transactions at [index location to be determined by Buyer] ICE index plus (premium, depending on Facility location) excluding Environmental Attributes. If there are no longer [On Peak] [Off Peak][Other Matching Profile]["Index" means…] market prices for Energy (excluding Environmental Attributes) transactions at [index location] published by ICE, the Parties will mutually agree to a replacement market price index that most closely reflects Energy (excluding Environmental Attributes) transactions at the geographic location of the markets at the Point of Delivery or [index location] markets as of the Effective Date. If a market price index for Energy (not including Environmental Attributes) that more accurately tracks the prevailing market price of the Delivered Energy at the Point of Delivery is created, the Parties may mutually agree to adapt such index price as the Market Price Index at such time.

"**Material Adverse Effect**" means any effect(s) that, individually or in the aggregate, is (i) material and adverse to the operations or physical condition of the Facility, and (ii) limits the ability of Seller to perform any of its obligations under this Agreement or any Ancillary Document.

"**MBE**" has the meaning set forth in Section 14.25(c).

"**Metering Policies**" means the then-current metering policies and guidelines adopted by LADWP, including the LADWP Bulk Electric System Meter Policy, the current version of which is attached as Appendix AD, and any successor thereto.

"**Milestone**" has the meaning set forth in Section 3.4.

"**Milestone Date**" has the meaning set forth in Section 3.4.

"**Monthly Report**" means the report required to be delivered by Seller pursuant to Section 4.10 in form and substance substantially similar to Appendix AE.

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

"**Mortgage**" has the meaning set forth in Section 2.2(d).

"**MVAR**" means megavolt-ampere-reactive or megavolt-amperes-reactive, as applicable.

"**MW**" means megawatt(AC).

"**MWh**" means megawatt-hour.

"**NEPA**" means the National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.*, as amended from time to time, the rules and regulations promulgated thereunder, and any successor statute.

"**NAESB**" means the North American Energy Standards Board and any successor thereto.

"**NERC**" means the North American Electric Reliability Corporation and any successor thereto.

"**NERC Reliability Standards**" means the reliability standards developed by NERC and approved by FERC, which are applicable to the Facility.

"**New Resource Implementation**" means the process and requirements established by the Balancing Authority for the [Attaining] Balancing Authority Area substantially similar in kind and cost to those as set forth by CAISO for interconnection projects to successfully complete resource implementation to the CAISO grid.

"**Non-Compensable Curtailments**" has the meaning set forth in Section 6.8(a).

"**Non-Consolidation Opinion**" means a reasoned opinion of Seller's legal counsel, addressed to Buyer on [(date)], in form and substance acceptable to Buyer's Authorized Representative, as to the non-consolidation of Seller in a Bankruptcy proceeding of [_____], attached hereto as Appendix L.

"**Non-Defaulting Party**" has the meaning set forth in Section 13.3(a).

"**Normal Startup**" has the meaning set forth in Appendix AB.

"**Normal Shutdown**" has the meaning set forth in Appendix AB.

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

"**Notice of Proposed Third Party Sale**" has the meaning set forth in Section 14.22(b).

"**NTP**" means a full notice to proceed issued by Seller to its general contractor for the commencement of installation and construction of the Facility pursuant to which such general contractor is obligated to commence the installation and construction of the Facility.

"**OATT**" means open access transmission tariff.

"**OBE**" has the meaning set forth in Section 14.25(c).

["**Off Peak**" means all hours other than On-Peak hours.]

"**On Peak**" means 06:00 a.m. to 10:00 p.m. every day of the week except Sunday.

["**Onsite Load**" has the meaning set forth in the Guidebook, as amended from time to time, or in other RPS Law, whichever is controlling.]

"**Operating Insurance**" means the Insurance required to be carried by Seller for the Facility after the achievement of Commercial Operation, as set forth in Appendix G.

"**Operation and Maintenance Plan**" has the meaning set forth in Section 4.3(a).

"**Option Agreement**" means that certain Option Agreement of even date herewith [substantially] in the form set forth in Appendix K, as such Option Agreement may be amended, supplemented or otherwise modified from time to time.

"**OSHA**" means Occupational Safety and Health Administration of the United States Department of Labor and any successor thereto.

"**Outside COD**" has the meaning set forth in Section 3.5(d)Section 3.5(c).

"**Pacific Prevailing Time**" means the local time in Los Angeles, California.

"**Participating Member**" means each of [list participating members].

"Participating Member Agreement" means the agreement(s) between Buyer and each Participating Member that sets forth the terms and conditions under which each Participating Member agrees to purchase from Buyer the Capacity Rights, Facility Energy and Environmental Attributes from the Facility.

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

"**PCC1 REC**" means a REC in Portfolio Content Category 1, as further defined in California Public Utilities Code Section 399.16(b)(1), or elsewhere in the RPS Law, as applicable.

"**Performance Assurance**" means Development Security or Performance Security.

"**Performance Security**" has the meaning set forth in Section 5.6(b).

"**Permit(s)**" 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 which are required to be filed, submitted, obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, [drilling,] financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production, sale and delivery of Facility Energy or Replacement Energy, as applicable, 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 those described in Appendix C.

"**Permitted Encumbrances**" means (i) the Mortgage and any other Lien approved by Buyer in a writing separate from this Agreement which expressly identifies the Lien as a Permitted Encumbrance, (ii) Liens for Taxes not yet due or for taxes being contested in good faith by appropriate proceedings, 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, *provided* that such proceedings end by the expiration of the Agreement Term, (iii) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings 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, *provided* that such proceedings end by expiration of the Agreement Term, (iv) the Real Property Agreements, or memoranda of such Real Property Agreements; and (v) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations listed as items [___] of Schedule B of the title insurance policy insuring the Mortgage, and *provided further* that, in the case of Liens being contested under subsections (ii) or (iii), Seller has provided additional security of a letter of credit substantially in the form attached hereto as Appendix F to Buyer and the Facility Lender jointly in an amount equal to or greater than the amount of such Lien multiplied by 1.25.

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

"**Point of Delivery**" means the point where any Energy sold and purchased under this Agreement is required to be delivered by Seller to Buyer, specifically [_____].

"**PMU**" has the meaning set forth in Appendix AC.

"**Post-Option O&M Plan**" has the meaning set forth in Section 4.9(a).

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

"**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 the City of Los Angeles.

"**Production Tax Credit**" or "**PTC**" means the Tax credit described in Section 45 of the Tax Code and any comparable or successor Tax credit thereto (including, without limitation, Section 45Y of the Tax Code).

"**Project Purchase Option**" means the right, but not the obligation, of Buyer, in its sole discretion, to purchase the Facility Assets and certain related assets from Seller in accordance with the provisions of this Agreement and the Option Agreement.

"**Project Substation**" has the meaning set forth in Section 11.6(a).

"**Proposed Purchase Notice**" has the meaning set forth in Section 14.22(a).

"**Proposed Sale Notice**" has the meaning set forth in Section 14.22(a).

"**Prudent Utility Practices**" means those practices, methods and acts, that are commonly used by a significant portion of the [_____] powered electric generation industry in prudent engineering and operations to design, construct, operate and maintain electric equipment (including [_____] powered facilities) lawfully and with safety, dependability, reliability, efficiency and economy, including any applicable practices, methods, acts,

guidelines, standards and criteria of FERC, NERC, and WECC, as each may be amended from time to time, and all applicable Requirements of Law.

"**Public Utilities Code**" means the Public Utilities Code of the State of California, as amended from time to time, and any successor thereto.

"**Q/A**" has the meaning set forth in Appendix I.

"**Q/A Manual**" has the meaning set forth in Appendix I.

"**Q/C**" has the meaning set forth in Appendix I.

"Qualified Issuer" means a domestic U.S. bank or a U.S. branch of a foreign bank (each such bank as approved by Buyer in writing, which approval shall not be unreasonably withheld, conditioned or delayed) that, in either case, has a then-current long-term credit rating (corporate or long-term senior unsecured debt) of (i) "A2" or higher by Moody's Investors Service, Inc. and "A" or higher by Standard & Poor's, if rated by both rating agencies; or (ii) "A2" or higher by Moody's Investors Service, Inc. or "A" or higher by Standard & Poor's, if rated by only one rating agency and, in addition to (i) or (ii), as applicable, (iii) has not suffered a Downgrade Event.

"**Qualified Operator**" means, with respect to the Facility, (i) an Affiliate of Seller, or (ii) 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 generation facilities similar to the Facility that are in excess of [XXX] MW in capacity.

"**Qualified Transferee**" means a Person that:

(a) has a net worth at the time of the transfer that is equal to or greater than $150,000,000, or who has a parent or an Affiliate with a net worth at the time of the transfer equal to or greater than $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) (i) retains or causes the Subsequent Owner to retain, a Qualified Operator or Qualified Operators to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility); and (ii) has, at the time of determination, at least three (3) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility within the last six (6) years, or has retained a third-party with such experience to operate the Facility,

(c) executes a written assumption agreement in favor of Buyer pursuant to which such Person shall assume all of the obligations of Seller under the PPA and the Ancillary Documents,

(d) is a Special Purpose Entity, and

(e) is not at the time of transfer in active litigation against Buyer or a Participating Member, or is reasonably acceptable to Buyer.

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

"**Quarterly Certificate**" has the meaning set forth in Section 12.2(s).

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

"**Real Property**" means the real property for the Site (as may be modified in accordance with Section 12.3(b) and Section 12.3(d)).

"**Real Property Agreements**" means the real property agreements listed in Appendix M (as may be modified in accordance with Section 12.3(b) and Section 12.3(d)), including the Lease.

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

"**Rejection Notice**" has the meaning set forth in Section 14.22(a).

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

"**Remedial Action Plan**" has the meaning set forth in Section 3.6.

"**Replacement Energy**" has the meaning set forth in Section 9.3(b).

"**Requirement(s)**" means, collectively, Prudent Utility Practices, all applicable Requirements of Law, the Permits, Seller's Quality Assurance Program, and any other requirements set forth in this Agreement.

"**Requirements of Law**" means federal, state and local laws, statutes, regulations, rules, codes or ordinances, resolutions, standards, guidebooks (including the Guidebook), directives, executive or other orders, judgement, decrees, ruling or determinations enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, Environmental Laws and occupational safety and health requirements), formal actions taken by a Governmental Authority (including any formal action taken by the city council or governing board of any Participating Member) and the International Trade Laws.

"**Resource Adequacy Attributes**" means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyer or Participating Members with respect to resource adequacy as described by the CPUC, the CEC, an applicable Balancing Authority (including but not limited to the CAISO [or the Attaining Balancing Authority]) or any other regional entity, and that are associated with the electric generating capability of the Facility.

"**Revenue Meter**" has the meaning set forth in Section 11.6(b).

"**Right of First Offer**" or "**ROFO**" has the meaning set forth in Section 14.22.

"**Right of First Refusal**" or "**ROFR"** has the meaning set forth in Section 14.22.

"**RPS Compliant**" means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such Facility or other facility, as applicable, at all times, shall, together with all of the associated Environmental Attributes, be of the nature to qualify as a PCC1 REC under the RPS Law.

"**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 Guidebook.

"**RTU**" has the meaning set forth in Section 4.6(a).

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

"**Sale Leaseback Financing**" means a sale leaseback whereby the Facility or Seller's interest in the Site (which for purposes of this definition shall exclude any easements associated with the transmission line) is sold by Seller to one or more investors (each, a "Lessor" and leased back by Seller and Seller retains a right of quiet enjoyment over the Site (or the Facility, as applicable) during the lease term as long as Seller pays Lessor thereof rent and meets its other obligations under the lease; *provided* that a Sale Leaseback Financing shall comply with the provisions of Section 12.4.

"**Sales Price**" has the meaning set forth in Section 6.4.

"**SBE**" has the meaning set forth in Section 14.25(c).

"**SCADA**" has the meaning set forth in Section 4.5.

"**Schedule**" or "**Scheduling**" means the actions of Seller and Buyer, Buyer's Agent, or their Authorized Representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of energy to be delivered at the Point of Delivery on any given date during the Delivery Term.

"**Scheduled Outage(s)**" means any outage(s) with respect to the Facility other than a Forced Outage.

"**Scheduled Outage Projection**" has the meaning set forth in Section 4.8(b).

"**Scheduler**" means the Persons doing Scheduling for each Party.

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

"**Seller Caused Access Failure**" has the meaning set forth in Section 4.7(c).

"**Seller's SCADA Integrated Components**" has the meaning set forth in Section 4.7(a).

"**Seller Party(ies)**" means Seller and all other Persons, excluding Buyer, executing any Ancillary Document, including without limitation any obligors providing Performance Assurance, now or hereafter in effect.

"**SFPO**" has the meaning set forth in Section 14.25(i).

"**Shortfall Damages**" has the meaning set forth in Section 9.5.

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

"**Site**" means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B (as may be modified in accordance with any termination, transfer or addition of any Real Property Agreements pursuant to Section 12.3(b) and Section 12.3(d)) as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

"**Site Control**" means that Seller shall: (i) own the Site; (ii) be the grantee or licensee of one or more easements with respect to the Site, which, in each case, permit Seller to perform all of its obligations under this Agreement and, as applicable, the other Ancillary Documents; (iii) be the lessee under one or more leases with respect to the Site which permit Seller to perform all of its obligations under this Agreement and the Ancillary Documents; or (iv) have 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 and the Ancillary Documents to which it is a party.

"**Special Purpose Entity**" means a limited liability company which at all times prior to, on and after the date hereof:

(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.

"**Startup and Test Energy**" means the MWh of Facility Energy that satisfies the Compliance Requirements and is delivered to the Point of Delivery prior to the Commercial Operation Date, which power shall not exceed, at any time, the Contract Capacity.

"**Startup Notice**" has the meaning set forth in Section 6.3.

"**Station Service**" has the meaning set forth in the Guidebook, or in other RPS Law, whichever is controlling.

"**Subsequent Owner**" has the meaning set forth in Appendix Z.

"**Successor Entity**" has the meaning set forth in Section 11.6(b).

"**System Emergency**" means (i) an emergency condition or abnormal interconnection situation which in the sole judgment of Buyer's Authorized Representative affects the ability of Buyer or Buyer's Transmission Provider to receive Energy at the Point of Delivery, (ii) an "Emergency Condition" as defined in the Transmission Provider's OATT, (iii) a NERC/FERC Emergency, or (iv) an emergency condition as determined by the Balancing Authority.

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

"**Tax Code**" means the Internal Revenue Code of 1986, as amended.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Financing.

"**Tax Financing**" means, with respect to Seller or any Upstream Equity Owner, any transaction or series of transactions in which (i) (a) one or more tax equity investors (each, a "***Tax Equity Investor***") buys an interest in Seller or in any Upstream Equity Owner acting as a holding company for Seller, (b) such Tax Equity Investors are thereafter allocated a disproportionate amount of the income, loss and tax credits associated with Seller, which may be revised after a "flip date," after which such allocations are reduced or otherwise modified, (c) on one or more dates on or after such "flip date" the other party or parties to such transaction or series of transactions that was the recipient of the remainder of any income, loss and tax credit allocations (that is, the non-Tax Equity Investor to the transaction or series of transactions) may have an option to repurchase any Tax Equity Investors' interest in Seller or such upstream equity intermediate entity acting as a holding company for Seller, and (d) such non-Tax Equity Investor's interest in Seller or such upstream equity intermediate entity retains management control over the Facility, but must obtain the agreement of the Tax Equity Investors prior to taking major decisions (in accordance with the applicable tax equity financing documents) with respect to Seller or such Upstream Equity Owner acting as a holding company, (ii) there is a Sale Leaseback Financing, (iii) one or more tax credit buyers purchases the ITCs or PTCs associated with the Project or (iv) another structure pursuant to which a third-party is able to monetize the tax credits and/or other benefits associated with the Facility to be agreed with the prior written consent of Buyer, such consent not to be unreasonably withheld.

"**Termination Notice**" has the meaning set forth in Section 13.3(a).

"**Termination Payment**" has the meaning set forth in Section 13.3(d).

"**Test Energy Period**" has the meaning set forth in Section 6.3.

"**TIN**" has the meaning set forth in Section 14.25(g).

"**Transmission Line Loss Factor**" means [XXX]%, which is the assumption used to calculate line losses on the gen-tie transmission line between the Project Substation and the Point of Delivery and will be applied to the readings taken by the Electric Metering Device(s) installed at the Project Substation as set forth in Section 11.6(b).

"**Transmission Planning**" has the meaning set forth in Appendix AC.

"**Transmission Provider(s)**" means the Person(s) operating the Transmission System(s) providing Transmission Services to or from the Point of Delivery.

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

"**Transmission System**" means the facilities utilized to provide Transmission Services.

"**UCC**" means the Uniform Commercial Code as enacted and in effect in the state where the Facility is located (and as it may from time to time be amended); *provided, however,* that if, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Buyer's Lien on the Facility is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Facility is located, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

"**Ultimate Upstream Equity Owner**" means, (a) as of the Effective Date, [name of entity in Section 1 of Appendix R] and (b) from and after any other Change in Control, where Seller's Ultimate Upstream Equity Owner entity changes, the new Ultimate Upstream Equity Owner, as will be updated in Appendix R.

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

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

"**WBE**" has the meaning set forth in Section 14.25(c).

"**WECC**" means the Western Electricity Coordinating Council and any successor entity thereto.

"**Western Interconnection**" means the wide area synchronous power grid overseen by the WECC.

"**WREGIS**" means Western Renewable Energy Generation Information System, any successor thereto, including any replacement system required by the CEC, or any replacement system as determined by Buyer.

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

"**WREGIS Operating Rules**" means the rules describing the operations of WREGIS, as published by WREGIS and as may be amended from time to time.

"**WREGIS Withhold Amount**" has the meaning set forth in Section 11.2(c).

Other terms defined herein have the meanings given to them in this Agreement.

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

(a) time is off the essence;

(b) the singular number includes the plural number and vice versa;

(c) reference to any Person includes such Person's successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(d) reference to any gender includes the other;

(e) reference to any agreement (including this Agreement), document, instrument or tariff or Requirement means such agreement, document, instrument or tariff or Requirement as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(g) "herein", "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

(h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(i) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including";

(j) reference to time shall always refer to Pacific Prevailing Time;

(k) reference to any "day" or "month" shall mean a calendar day or calendar month respectively, unless otherwise indicated, and assumes the use of Pacific Prevailing Time to determine the start and end of each referenced "day" or "month", unless otherwise indicated;

(l) the term "or" is not exclusive; and

(m) with respect to obligations, the terms "shall" and "will" shall have the same meaning and be of equal force and effect.

Section 1.3 Order of Precedence. In the event of any conflict or inconsistency between or among the terms and conditions of any of the body of this Agreement, the Appendices and Exhibits attached to the body of this Agreement and the Ancillary Documents, the following order of precedence, consistent with the controlling Requirements of Law, shall govern the interpretation of this Agreement: (i) the body of this Agreement, (ii) the Appendices and Exhibits attached to the body of this Agreement, (iii) the Option Agreement and (iv) the Ancillary Documents other than the Option Agreement.

ARTICLE II
EFFECTIVE DATE, TERM AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, Seller shall execute and deliver to Buyer the Option Agreement. No later than five (5) Business Days after the Effective Date, Seller shall deliver (or cause to be delivered) to Buyer:

(a) the Legal Opinion and the documents described in Section 12.2(b);

(b) copies of all requisite resolutions and incumbency certificates of each Seller Party and any other documents evidencing all actions taken by each Seller Party to authorize the execution and delivery of this Agreement and all Ancillary Documents requiring execution by such Seller Party, such resolutions to be certified as of the Effective Date by an authorized representative of the Seller Party;

(c) true, correct and complete copies of all documents relating to the environmental condition of the Site in form, scope and substance reasonably satisfactory to Buyer's Authorized Representative, including but not limited to any environmental site assessment prepared relative to that real property;

(d) evidence of Site Control acceptable to Buyer's Authorized Representative in his or her sole discretion;

(e) all certificates and other documents required to establish that the insurance policies required by Appendix G are in full force and effect upon the Effective Date; and

(f) 50% of the Development Security in accordance with Section 5.6(a).

Section 2.2 Approvals Date Obligations.

(a) Within five (5) Business Days of the date on which all Approvals have been obtained, Buyer shall provide written notice to Seller of the occurrence thereof and the Approvals Date.

(b) No later than five (5) Business Days after the Approvals Date, Seller shall deliver to Buyer the Non-Consolidation Opinion and Enforceability Opinion.

(c) No later than ten (10) Business Days after the Approvals Date, Seller shall deliver to Buyer 50% of the Development Security in accordance with Section 5.6(a).

(d) No later than ten (10) Business Days after the Approvals Date, Seller shall deliver to Buyer evidence to the satisfaction of Buyer that:

(i) Seller granted to and perfected in favor of Buyer a valid Lien on the Facility, under one or more documents in form and substance satisfactory to Buyer's Authorized Representative[and the Los Angeles City Attorney], including without limitation UCC filings and financing statements (collectively, as each of the same may be amended or supplemented from time to time in accordance with its terms, the "***Mortgage***") to secure all obligations of Seller to Buyer under the Option Agreement, and such Mortgage has been recorded in the official records of [_____] County, [applicable state];

(ii) The Lessor under the Lease executed and delivered to Buyer (i) an intercreditor agreement, in form and substance satisfactory to Buyer's Authorized Representative[and the Los Angeles City Attorney], granting Buyer, among other things, cure and step-in rights under the Lease, and (ii) a memorandum of Lease which was recorded in the official records of [_____] County, [applicable state];

(iii) Buyer received a valid, binding and enforceable ALTA 1970 Form B (or equivalent) mortgage policy of title insurance with respect to the real property subject to the Mortgage issued by a company or companies acceptable to Buyer's Authorized Representative, in an amount acceptable to Buyer's Authorized Representative, with reinsurance and endorsements as Buyer's Authorized Representative may require, containing no exceptions to title (printed or otherwise) other than Permitted

Encumbrances or other exceptions that are acceptable to Buyer's Authorized Representative, and insuring that such real property is free of Liens or other exceptions to title other than Permitted Encumbrances (or other exceptions that are acceptable to Buyer's Authorized Representative) and providing full coverage against Liens of all materialmen and mechanics, whether filed or unfiled;

(iv) Seller has obtained all Permits described in Appendix C, except for any such Permits not yet required to be obtained but which can reasonably be expected to be obtained when needed, and each such Permit is final and non-appealable.

(e) No more than thirty (30) days after the Approvals Date, Seller shall deliver to Buyer a copy of the CEC pre-certification application for the Facility in the name of Seller that has been filed with the CEC.

Section 2.3 Agreement Term and Delivery Term. This Agreement shall have a delivery term commencing on the Commercial Operation Date and ending upon the conclusion of the Final Stub Year, unless sooner terminated in accordance with the terms of this Agreement (the "***Delivery Term***"). The term of this Agreement shall commence on the Effective Date and shall end upon the expiration of the Delivery Term or earlier termination of this Agreement in accordance with the terms hereof (the "***Agreement Term***"). [Buyer may extend the Delivery Term (i) for up to two additional five (5) year terms (each such five-year period, an "***Extension Term***") or (ii) if Buyer has exercised its Purchase Option under the Option Agreement, such period from the date this Agreement would have otherwise terminated in accordance with its terms until the closing of the Purchase Option under the Option Agreement.]

Section 2.4 Survivability. The provisions of this Article II, Article XII, Article XIII, Section 14.19 (except indemnification for breach of contract, which shall survive for four (4) years), and Section 14.21 (except for information marked by Buyer or Participating Member as critical energy infrastructure information (or CEII), which shall survive indefinitely) shall survive for a period of one (1) year following the termination of this Agreement. The provisions of Article XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to the period prior to termination of this Agreement.

Section 2.5 Early Termination. Without limiting Buyer's rights in this Agreement, including any other termination rights that may not be enumerated in this Section 2.5, Buyer may terminate this Agreement as follows:

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

(b) Early Termination for Default. Upon the occurrence and during the continuation of a Default subject to applicable cure periods, if any, the Non-Defaulting Party may, in its sole discretion, terminate this Agreement as set forth in Section 13.3.

(c) Early Termination for Business Policies. Buyer, in its sole discretion, may terminate this Agreement for Seller's failure to comply with the provisions set forth in Section 14.25.

(d) Early Termination for Failure to Achieve Key Milestones. Buyer, in its sole discretion, may terminate this Agreement effective upon sending notice to Seller if Seller fails to achieve any Key Milestone by the applicable Milestone Date.

(e) Early Termination for Compliance Failure. Buyer, in its sole discretion, may terminate this Agreement pursuant to Section 8.7.

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

(g) Exercise of Project Purchase Option. In the event Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement unless sooner terminated as otherwise herein provided.

(h) Termination by Buyer Regarding CEQA. This Agreement shall terminate when and as provided in Section 3.1.

(i) Early Termination for Failure to Obtain CEC Certification. Buyer may, in its sole discretion, terminate this Agreement effective upon notice to Seller pursuant to Section 3.7 if the Facility is not CEC Certified within one hundred eighty (180) days of the Commercial Operation Date.

(j) Early Termination for Failure for Consecutive Shortfalls. The failure of the Facility during any three (3) consecutive Contract Year-periods (which shall be calculated for any such failure that occurs during the Initial Stub Year or Final Stub Year, to include such Initial Stub Year and Final Stub Year, as applicable, and three (3) additional calendar years) to deliver at least seventy percent (70%) of the Guaranteed Delivered Energy.

(k) Early Termination for Change in Market Structure. Buyer, in its sole discretion, may terminate this Agreement effective upon sending notice to Seller in the event that the Transmission System and/or the costs of Transmission Services are affected to any degree by (i) the CAISO's participation in, or transformation into, a larger regional transmission organization or (ii) any other change to the WECC market structure.

(l) Early Termination for Exercise of ROFO or ROFR. If Buyer accepts the Right of First Offer or Right of First Refusal for any proposed sale of all or any portion of the Facility or the Facility Assets, this Agreement shall terminate effective upon the consummation of any such sale to Buyer pursuant to Section 14.22.

(m) Early Termination for Failure to Obtain Required Approvals. If the Approvals Date has not occurred by the Approvals Deadline, then within ten (10) Business Days after the Approvals Deadline, either Buyer or Seller may terminate this Agreement and the Option Agreement by providing written notice to the other Party signed by a duly-authorized officer of Buyer or Seller, as applicable, which specifically provides that Buyer or Seller, is exercising its right to terminate this Agreement and the Option Agreement and specifically provides that such termination is being made pursuant to this Section 2.5 of the Agreement, with such termination to be effective immediately. Notwithstanding the immediately preceding sentence, each Party's right to terminate shall expire on the earlier to occur of (a) the Approvals Date and (b) ten (10) Business Days after the Approvals Deadline. Upon such termination, neither Party shall have any liability to the other Party for such termination, subject to any obligations specified in Section 2.5.

(n) Early Termination for Failure to Provide Real-Time Data. Buyer may terminate this Agreement pursuant to Section 4.7.

ARTICLE III
DEVELOPMENT OF THE FACILITY

Section 3.1 In General.

(a) Permitting. Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain and/or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law, including but not limited to the timely preparation of all environmental documents required to review the Facility under applicable federal and California law, including NEPA and CEQA. Seller shall be responsible for paying the cost of any expenditures necessary to cause the Facility and its operations to continue to comply with the Permits.

(b) Project Design. Seller shall ensure that the proposed location, design, configuration and capacities of the Facility are consistent with the Requirements, including but not limited to the characteristics and other requirements for the Facility set forth in Appendix B, and also subject to any conditions imposed as part of any required CEQA review of the Facility.

(c) Meetings with any Governmental Authority. Seller shall represent the Facility as necessary in all meetings with and proceedings before any Governmental Authority.

(d) NEPA Compliance. Seller represents and warrants that neither the Facility nor any related component is subject to environmental review pursuant to NEPA, or, if such review was required, the Facility and its related components have satisfied all NEPA requirements. Seller will provide evidence supporting the foregoing as Buyer may reasonably request.

(e) CEQA Compliance.

(i) Compliance with any applicable CEQA requirements is the sole responsibility of Seller, except where the construction, maintenance, or operation of the Facility requires a discretionary approval by Buyer that is subject to CEQA.

(ii) Buyer reserves all of its rights and powers under CEQA that may be applicable, including the power to: (1) review the Facility and its environmental impacts; (2) prepare and/or review environmental documents and studies; (3) adopt feasible mitigation measures and/or alternatives in order to avoid or lessen any significant environmental impacts resulting from the project; (4) determine that any significant impacts that cannot be mitigated are acceptable due to overriding considerations; and (5) decide to terminate this Agreement due to any significant adverse environmental effects resulting from the Facility.

(iii) Seller shall have no obligation to sell, and Buyer shall have no obligation to purchase, any Energy under this Agreement until: (1) any and all CEQA review relating to the Facility is complete; (2) Buyer has decided, based on that review, to approve the purchase of Energy from the Facility; and (3) the applicable period for any legal challenges under CEQA relating to the Facility has expired without any such challenge having been filed or, in the event of any such challenge, that the challenge has been determined adversely to the challenger by dismissal, final judgment or settlement. If Buyer, based upon its independent review of the potential environmental impacts of the Facility, decides not to approve the purchase of Energy from the Facility and to terminate this Agreement, due to significant adverse environmental effects from the Facility, Buyer will give Seller notice thereof and this Agreement will terminate upon the giving of such notice.

(f) Construction and Ownership of the Facility. Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. Except as otherwise permitted by this Agreement, the Facility shall be owned (or leased pursuant to a Sale Leaseback Financing, the Lease, the Real Property Agreements, or any other lease arrangement meeting the Site Control requirements and otherwise reasonably

acceptable to Buyer) by Seller during the Agreement Term from and after the Construction Commencement Milestone. Seller shall develop, finance, operate and maintain the Facility, at its sole risk and expense, and in compliance with the Requirements and applicable manufacturer's and operator's specifications and recommended procedures; *provided, however,* meeting these requirements shall not relieve Seller of its other obligations under this Agreement. 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 which are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer. The Facility shall be operated during the Delivery Term by the party listed as the operator on Appendix D or such other Person as Buyer shall approve in the exercise of its reasonable discretion.

(g) Site Confirmation. Seller represents and warrants that Seller's agents and representatives have visited, inspected and are familiar with the Site, in particular with the Real Property and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, the presence, if any, of archaeological and cultural artifacts and topography, and solar radiation, air and water quality conditions; that Seller is familiar with all local and other conditions which may be material to Seller's performance of its obligations under this Agreement (including transportation, seasons and climate, access, weather, the presence, if any, of endangered species, handling and storage of materials and equipment and availability and quality of labor and utilities); and that based on the foregoing, the Real Property constitutes an acceptable and suitable site for the construction and operation of the Facility and the associated generation tie-line and interconnection facilities in accordance herewith. Any failure by Seller to take the actions described in this Section 3.1 shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer.

(h) Test Plan for Test Energy Period. Prior to the start of the Test Energy Period, Seller shall provide the Buyer and Buyer's Agent an overall test plan per technology type and at the Point of Delivery for the Facility, which includes, but is not limited to:

(i) The information required under Section 4.6(d);

(ii) Projected schedules for testing in accordance with the Prudent Utility Practices;

(iii) 20-day operational test in accordance with Appendix O, item 7;

(iv) Anticipated Commercial Operation Date; and

(v) Evidence of compliance with New Resource Implementation requirements in accordance with Section 4.12.

Section 3.2 Certification of Commercial Operation Date. Seller shall provide Buyer with no fewer than one hundred eighty (180) days prior written notice of the anticipated date of the Commercial Operation Date. Seller shall deliver a written completion certification to Buyer in the form of Appendix O with respect to the Commercial Operation Date. Once such certification has been delivered, Buyer shall have up to thirty (30) Business Days from the receipt of such certification to either accept or reject, in writing, the certification; *provided*, Buyer may not unreasonably withhold, delay or condition acceptance of any such certification, and any rejection by Buyer must be reasonable and contain a written description with reasonable detail of Buyer's reasons therefor. If Buyer rejects any such certification, Seller shall promptly correct those defects or deficiencies as directed by Buyer and resubmit the certification, and Buyer shall have up to fifteen (15) additional Business Days

from the date of such resubmission to either accept or reject such resubmitted certification. Buyer shall in all cases respond in writing to any such certification within such thirty (30) Business Day or fifteen (15) Business Day period (as applicable) and shall be deemed to have accepted such certification effective on the earlier of Buyer's actual acceptance thereof or the thirty-first (31st) Business Day or sixteenth (16th) Business Day (as applicable) following Buyer's receipt thereof if Buyer fails to respond in writing within such timeframe. The Commercial Operation Date shall occur as of the date upon which the Seller certification is accepted (or deemed accepted) by Buyer. Any Daily Delay Damages otherwise payable under Section 3.5(a) shall be excused for each day following the date of Seller's delivery of a certification of such Commercial Operation Date under this Section 3.2 until the date on which Buyer responds to such certification under this Section 3.2, unless Buyer reasonably rejects such certification, in which case Daily Delay Damages shall be due and payable for each day between the GCOD and the date until a revised certification of the Commercial Operation Date has been delivered by Seller and accepted by Buyer (in which case, such Daily Delay Damages shall only be payable up to the date that such certification was delivered by Seller).

Section 3.3 Other Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of Seller, its subcontractors or the Facility, financial or otherwise, and other data concerning Seller, its subcontractors or the Facility as Buyer or Buyer's Authorized Representative may, from time to time, reasonably request. Seller shall list its subcontractors in Appendix H, which shall be updated from time to time, *provided* that such update shall not be considered a formal amendment pursuant to Section 14.11. During the period from the Effective Date until the Commercial Operation Date, Seller shall provide to Buyer quarterly written reports describing permitting, development, construction, start-up, and testing activities in the previous quarter and anticipated progress and activities for the upcoming quarter, including any significant developments or delays and Seller's estimated adjustment to the anticipated Commercial Operation Date, as applicable. During the period from the NTP until Commercial Operation Date, Seller shall include gantt chart updates in such quarterly report. During the period from the Effective Date until Commercial Operation Date, Buyer and Seller will develop operational procedures and protocols applicable to the Facility. Buyer and Buyer's Authorized Representative shall be permitted to inspect the Facility from time to time upon reasonable notice to Seller and during reasonable business hours.

Section 3.4 Milestone Schedule. Seller has provided a milestone schedule with deadlines for the development of the Facility in Appendix J. From and after the Approvals Date, Seller shall provide Buyer a quarterly report setting forth the status of each milestone in Appendix J, including the timing and status for obtaining all requisite Permits set forth in Appendix C. The quarterly report shall also include a description of any deadline that has been missed and any event that could reasonably cause a deadline to be missed. Seller shall achieve each milestone set forth in Appendix J (each, a "***Milestone***") by the date specified therefor, subject to day-to-day extensions for delays due to Force Majeure (each such date as so extended (if at all), a "***Milestone Date***").

Section 3.5 Performance Damages.

(a) If Seller fails to achieve a Key Milestone by its respective Milestone Date, Seller shall pay liquidated damages to Buyer in an amount equal to the Development Security divided by ninety (90) per day (the "***Daily Delay Damages***") for each day intervening between the Milestone Date and the earlier of (i) the date the Key Milestone is achieved, and (ii) the date, if any, on which this Agreement is terminated by Buyer pursuant to Section 2.5. The Parties agree that (x) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (y) the liquidated damages provided for in this subsection are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a

circumstance. Buyer may draw from the Development Security the amount of any such Daily Delay Damages due and owing to Buyer.

(b) If more than one Key Milestone is missed on any given day, then Seller shall pay Buyer the aggregate amount of such Daily Delay Damages for each missed Key Milestone.

(c) If the Force Majeure event extends the GCOD by two hundred forty (240) or more consecutive calendar days or by an aggregate of three hundred sixty-five (365) consecutive or non-consecutive calendar days, then Buyer may terminate this Agreement, in its sole discretion, and Buyer shall return the Development Security to Seller less (i) any amounts that are due and owing to Buyer under this Agreement and (ii) any amounts previously drawn by Buyer in accordance with this Agreement.

(d) Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Commercial Operation Date occur later than one hundred eighty (180) days after the GCOD (the "***Outside COD***"), and the failure to achieve the Commercial Operation Date by the Outside COD shall be an immediate Default by Seller; *provided* that the Outside COD may be extended as set forth in Section 3.5(a) due to Force Majeure.

Section 3.6 Remedial Action Plan. In addition to the payment of Daily Delay Damages in accordance with Section 3.5 for failure to timely achieve a Key Milestone by the applicable Milestone Date, if Seller fails to achieve a Key Milestone by the applicable Milestone Date therefor (or if Seller anticipates that it will not timely achieve a Key Milestone by the applicable Milestone Date), Seller shall immediately notify Buyer of such failure and, no more than ten (10) days following the failure to achieve such Milestone (or the date upon which Seller anticipates such a failure will occur), provide Buyer with a written action plan detailing how Seller will cure such failure (such plan, a "***Remedial Action Plan***"). The proposed Remedial Action Plan must in all cases be acceptable to Buyer. The Remedial Action Plan shall specify in reasonable detail Seller's analysis of the causes of the missed Milestone Date (or anticipated missed Milestone Date), the actions that Seller plans to take to correct such underperformance and to ensure that all future Milestones, including the GCOD, will be achieved, and the time needed to complete such corrective actions. Seller shall complete all corrective action pursuant to the provisions of the Remedial Action Plan. Seller may (a) supplement the Remedial Action Plan, as may be reasonably required, or (b) provide Buyer with written notice of any deviations from the approved Remedial Action Plan; *provided* that in the case of (a) or (b), any supplements to, or deviations from, the Remedial Action Plan must be acceptable to Buyer.

Section 3.7 CEC Certification. Promptly, but in no event more than ten (10) days following the Commercial Operation Date, Seller shall file with the CEC all materials and documents required to demonstrate that the Facility is entitled to be CEC Certified. Seller shall promptly provide Buyer with copies of all submittals to the CEC and other correspondence between Seller and the CEC. Seller shall cause the Facility to be CEC Certified and deliver to Buyer evidence reasonably satisfactory to Buyer that the Facility is CEC Certified within one hundred eighty (180) days of the Commercial Operation Date. Failure by Seller to comply with the requirements set forth in this Section 3.87 shall constitute an event of default by Seller, subject to the cure period set forth in Section 13.1(b). During any period when Delivered Energy is provided in which CEC Certification has not been obtained, Buyer may withhold the WREGIS Withhold Amount; *provided*, *however*, Buyer shall pay to Seller, for each MWh generated by the Facility after the Certification Eligibility Date and for which a WREGIS Certificate was credited to Buyer's WREGIS account, any WREGIS Withhold Amount previously withheld by Buyer.

Section 3.8 NERC Registration. Promptly, but in no event more than ten (10) days following the Commercial Operation Date, Seller shall, at its cost, register with NERC for all applicable Function Types in the

NERC Compliance Registry in accordance with the currently effective NERC Rules of Procedure, including Seller's registration as both Generator Owner and Generator Operator.

ARTICLE IV
OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 Compliance with Electrical Service Requirements. Seller shall, at its sole expense, operate and maintain the Facility (i) in accordance with Prudent Utility Practices, the requirements of this Agreement, all applicable Requirements of Law and the requirements of applicable manufacturers' and operators' specifications, using commercially reasonable efforts to comply with any published recommendations of the manufacturers and suppliers of the major components of the Facility, (ii) with due regard for the safety, security and reliability of the interconnection facilities and the Transmission System, (iii) in accordance with Buyer's system protection design requirements, attached hereto as Appendix AB and (iv) in a manner that is reasonably likely to maximize the output of Energy from the Facility and result in a useful life for the Facility of not less than [_____] years.

Section 4.2 General Operational Requirements. As set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times:

(a) Employ, or engage through a Qualified Operator, qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Test Energy Period and through the Delivery Term;

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

(c) Comply with operating and maintenance standards recommended by and required by the Facility's equipment suppliers; and

(d) Ensure remote monitoring of the Facility and that necessary personnel shall promptly respond to emergencies consistent with industry practices during the Test Energy Period and through the Delivery Term.

Section 4.3 Operation and Maintenance Plan after Commercial Operation. Following the Commercial Operation Date, Seller shall:

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

(b) Provide to Buyer, on a monthly basis, any regularly prepared operation and maintenance status reports of the Facility provided to WECC or lenders pursuant to a Financing Agreement.

(c) In addition to the other required and preventive maintenance actions contained in this Agreement, notify Buyer of its actions to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventive maintenance requirements for the following calendar year, including the performance of maintenance in accordance with Section 4.8(b); (iii) conduct periodic maintenance of various equipment,

including a report about any findings; (iv) conduct periodic Q/A and Q/C activities and inspections in accordance with Appendix I, including a report thereof; (v) hire subcontractors, as applicable, to meet the Facility's maintenance, betterment and improvement needs; and (vi) schedule and assign routine maintenance during operations and planned outages, as well as maintenance that can be conducted during a Forced Outage, or during an outage occurring as a result of curtailment notifications.

(d) In the event of a Forced Outage affecting the lesser of 25 MW or ten percent (10%) of the capacity of the Facility, to the extent practicable, Seller shall notify Buyer or Buyer's Agent of the Forced Outage without undue delay not to exceed one (1) hour of the Forced Outage and provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(e) Consistent with Prudent Utility Practices, Seller shall at all times maintain the ability to continue to provide real-time data to Buyer to implement curtailments and adjust curtailment amounts in real-time if Seller's primary communications means become unavailable at any point in time.

Section 4.4 Forecasting and Scheduling of Energy and Scheduled Outages. The Parties agree to the following forecast and scheduling procedures for Delivered Energy during the Delivery Term, as may be updated from time to time:

(a) Seller shall provide Buyer and Buyer's Agent on a forward basis an hourly forecast per technology type and at the Point of Delivery of Delivered Energy during the Delivery Term for the following timeframes:

(i) Monthly, for the following three (3) years;

(ii) Weekly, for the following fourteen (14) days;

(iii) Day-ahead, for the following forty-eight (48) hours; and

(iv) Real-time, in accordance with Section 4.5.

(b) Forecasts shall account for planned or unplanned outages at the facility that could affect the Delivered Energy.

(c) Seller shall make available to the ECC, Buyer and Buyer's Agent, as a graphical display, the forecasted and actual output for the Facility in increments not to exceed one (1) minute averages via a web portal and secure client login, including Secure File Transfer Protocol and Application Programming Interface.

(d) All generation Scheduling and Transmission Services shall be performed in accordance with the applicable NERC Reliability Standards, NAESB standards, and WECC regional policies, criteria and any other applicable guidelines. This may include, but not be limited to, dynamic adjustments to e-tags to reflect the previous hour's metered Energy output. Seller shall fulfill any contractual, metering and interconnection requirements to be able to deliver Energy to the Point of Delivery.

(e) By 4:30 a.m. on the WECC pre-scheduling day immediately preceding the date of delivery of Energy during the Agreement Term, Seller or Seller's designee shall provide Buyer or Buyer's Agent with a copy

of a non-binding hourly forecast of deliveries of Energy for each hour of the next date of delivery of Energy (the "***Day Ahead Schedule***"). If the WECC pre-scheduling day pertains to multiple dates of delivery, then this requirement shall apply to each of those dates. After 4:30 a.m. on such WECC pre-scheduling day, subject to Section 4.7, Seller or Seller's designee may contact Buyer or Buyer's Agent by telephone to provide any Scheduling updates or changes and the reason for such updates or changes. Acceptable reasons for such updates shall be with respect to current conditions (other than commercial considerations), including weather and applicable balancing authority rules.

(f) By 12:00 p.m. on the Business Day prior to each WECC pre-scheduling day, Seller shall provide Buyer, Buyer's Authorized Representative, Buyer's Agent, Buyer's real-time operators, Buyer's Scheduler and any other designated Scheduling representative of Buyer, via email, day-ahead hourly pre-schedules for the WECC prescheduling day in the form of an Excel spreadsheet or other format agreed to by Buyer's Authorized Representative. In order to allow Buyer to make schedule changes in conformity with the CAISO Scheduling deadline, as applicable, Seller shall notify Buyer or Buyer's Agent via telephone of any hourly changes due to a change in unit availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour.

(g) During the Agreement Term, if Seller or Seller's designee becomes aware of changes to the Day Ahead Schedule on the actual date of delivery of Energy due to current conditions, including weather or environmental conditions, an unscheduled outage or a scheduling change imposed by Buyer or a Transmission Provider that results in a change to the Facility's deliveries (whether in part or in whole), Seller or Seller's designee shall immediately notify Buyer of any and all changes to the Day Ahead Schedule and provide a revised schedule as soon as possible in an electronic format, either via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's Agent, Buyer's real-time operators, Buyer's Scheduler and any other designated Scheduling representative of Buyer or via email in the form of an Excel spreadsheet (or any combination thereof), but in no event later than two (2) hours prior to the first updated hour.

Section 4.5 Real-Time Deviations to Energy Output. The Parties agree to the following scheduling procedures:

(a) Seller shall notify Buyer and Buyer's Agent on a forward (monthly, weekly and day-ahead) basis, as provided in this Section 4.5 and, as needed, in real time, of any reduction in availability of the Facility that exceeds one (1) MW;

(b) Seller shall make available to the ECC, Buyer and Buyer's Agent, as a graphical display, the forecasted and actual output for the Facility in increments not to exceed one (1) minute averages via a web portal and secure client login, including Secure File Transfer Protocol;

(c) Seller shall make available to Buyer and Buyer's Agent real-time data of actual output, which shall be automatically telemetered to Buyer's or Buyer's Agent's supervisory control and data acquisition ("***SCADA***") system; and

(d) Either Buyer's Authorized Representative, Buyer's Agent or Buyer's Transmission Provider shall have the right, in accordance with Section 6.8, to contact Seller and require that the Facility be curtailed or to directly curtail the Facility which may be modified, from time to time, by written agreement between Seller's Authorized Representative and, with respect to Buyer, Buyer's Authorized Representative or Buyer's Agent, in order to comply with all applicable requirements, including those of the Transmission Provider, WECC or any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives

shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to the scheduling procedures, in accordance with Section 4.4 and Section 4.5.

Section 4.6 Startup and Test Energy.

(a) Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer the following data on a real-time basis:

(i) Read-only access to [meteorological and pyranometer measurements, the parameters of which are provided in Appendix S, MW capacity based upon inverter and panel availability, and any other] Facility availability information;

(ii) Read-only access to energy output information collected by the SCADA system for the Facility; *provided* that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and pyranometer and meteorological measurements to Buyer in four (4) second intervals in the form of a one (1) hour flat file to Buyer through a file transfer protocol system with an email back up for each flat file submittal. Seller shall store such information for up to three (3) months after delivery thereof to Buyer; and

(iii) Read and write access to all Electric Metering Devices [other than meteorological data] installed, owned and operated by Seller at the Project Substation that are used to measure Delivered Energy.

(b) All data points in Section 4.6(a) shall be provided through the Facility's Distributed Control Systems ("***DCS***") that are capable of interfacing with both a primary Remote Terminal Unit ("***RTU***") for the LADWP Automatic Generation Control and a secondary RTU for LADWP's back up Automatic Generation Control. The Automatic Generation Control RTU shall have interface capability for a PI historian.

(c) Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer NERC, WECC and FERC compliance reports regarding the Facility when they are issued.

(d) During the Test Energy Period, Seller shall provide the Buyer and Buyer's Agent an hourly forecast for a rolling fourteen(14)-day period for each technology type and expected Delivered Energy. The hourly forecasts will include but will not be limited to: Anticipated MW and MVAR profiles, target power factor, available facility capacity, details on the date-specific testing activities, and any additional data requested by Buyer. Hourly profiles are to be updated and supplied to Buyer daily during the Test Energy Period by 11:00 am Pacific Prevailing Time.

Section 4.7 Real-Time Data Requirements.

(a) No later than the first date on which Startup and Test Energy is received by Buyer from the Facility, Seller shall have installed (or caused to have installed) and shall provide primary and backup items for each component of the SCADA related equipment (items (i) through (v) below, collectively, "***Seller's SCADA Integrated Components***"). Seller shall coordinate the installation and maintenance of such Seller's SCADA Integrated Components. Seller shall install, or have installed, all of the following Seller's SCADA Integrated Components in a secure NERC interconnection facility (as applicable):

(i) The Revenue Meter;

(ii) Facility DCS controllers;

(iii) RTU, if separate from DCS controller;

(iv) Internal networking to accommodate transfer to Buyer's RTU designated in (d) below; and

(v) Telecommunications equipment and lines from the Facility to the Point of Delivery.

(b) Throughout the Delivery Term, Seller shall provide Buyer with the following data on a real-time basis:

(i) Read-only access to Energy information collected by the SCADA system for the Facility, including with respect to the following:

(A) Read-only access to all primary and secondary Electric Metering Devices installed, owned and operated by Seller at the Facility;

(B) Read-only access to meteorological and pyranometer measurements, the parameters of which are provided in Appendix S; and

(C) MW capacity of the Facility based upon inverter and panel availability, and any other Facility availability information.

(c) If a Participating Member is unable to access its SCADA system (i) due to a failure of Seller's or its subcontractors' equipment or systems, or operation or maintenance thereof (each such inability, a "***Seller Caused Access Failure***") or (ii) for reasons other than a failure of such Participating Member's equipment or systems, or operation or maintenance thereof, including a Seller Caused Access Failure (each such inability, an "***Access Failure***"), in each case, for a continuous fifteen(15)-minute period, Buyer shall provide prompt written notice to Seller, and upon written request from Buyer:

(i) Seller shall provide to Buyer energy output information on a continuous basis and pyranometer and meteorological measurements, each in four(4)-second intervals in the form of a one(1)-hour flat file to Buyer through a secure file transport protocol system with an e-mail back-up for each flat file submittal. Seller shall store such information for up to three (3) months after delivery thereof to Buyer;

(ii) Buyer may, in its sole discretion, assume control of the operation of the Facility and (i) curtail the Facility Energy or (ii) allow the Facility to continue to generate Facility Energy with guidance from Buyer, in each case until the Participating Member is again able to access its SCADA system;

(iii) Following receipt by Seller of notice of a Seller Caused Access Failure under Section 4.7(c), Seller shall pay Buyer $1,000 per day as liquidated damages, and not as a penalty, for each day following the first twenty-four (24) hours after receipt of written notice from Buyer of such Seller Caused Access Failure (which notice may be provided via email) until the Seller Caused Access Failure is resolved; and

(iv) Within 48 hours following receipt by Seller of notice of an Access Failure under Section 4.7(c), Seller shall undertake, and coordinate with Buyer, to re-establish real-time data access to the Facility's SCADA system.

The Parties acknowledge and agree that the damages that Buyer would incur due to the failure to timely resolve a Seller Caused Access Failure would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances and, therefore, the payment of the liquidated damages described in clause (iii) is a fair and reasonable remedy for such damages. The provision of such liquidated damages shall be in lieu of actual damages for the occurrence of any Seller Caused Access Failure hereunder, but shall not limit Buyer's rights to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after any such Seller Caused Access Failure, or (ii) recover any damages not directly attributable to any such Seller Caused Access Failure. but shall not limit Buyer's rights to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after any such Seller Caused Access Failure, or (ii) recover any damages not directly attributable to any such Seller Caused Access Failure.

(d) All data points shall be provided through the Facility's DCS that is capable of simultaneously interfacing with both a primary RTU for the LADWP automatic generation control and a secondary RTU for LADWP's back up automatic generation control. At the discretion of Buyer, the RTUs may be omitted depending on final configuration. Seller shall connect the primary automatic generation control to two (2) separate and independent transports and shall connect the back-up automatic generation control to a third, separate and independent transport in order to avoid the risk of a single point of failure. Communication protocols shall be Distributed Network Protocol ("***DNP***") 3.0. The automatic generation control RTU shall have interface capability for the Participating Member's historian (e.g., PI historian). Seller shall compile and deliver to Buyer a Monthly Report confirming the information reported in real-time under Section 4.7(b)(i).

(e) Seller shall provide data required under this ARTICLE IV in accordance with the following protocols: (i) DNP 3.0 TCP/IP for primary and secondary communications between the Facility and Buyer, (ii) DNP 3.0 Serial for backup communication between the Facility and Buyer, (iii) DNP 3.0 for communication between the Facility's DCS and intelligent electronic devices (e.g. SEL relays, SEL meters, and Areva relays), and (iv) any specific Open Systems Interconnection used by Buyer or Buyer's Agent to execute DNP 3.0 configurations.

(f) A draft SCADA points list shall be provided to Buyer's Agent for review and SCADA data maps of any equipment polled by the Facility plant controller, and the Facility's DCS shall be provided to Buyer no later than one hundred twenty (120) days following the Construction Commencement Milestone. The Facility plant controller and DCS shall have automatic and remote shutdown via SCADA in case of catastrophic system failure.

Section 4.8 Outages and Curtailments

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain consecutive or nonconsecutive weeks of each Contract Year (not to exceed twelve (12) weeks per Contract Year) specified by Buyer's Authorized Representative (the "***Major Maintenance Blockout***"), but in accordance with Prudent Utility Practices. No later than one hundred twenty (120) days prior to the Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer's Authorized Representative shall provide Seller with their specified Major Maintenance Blockout. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices.

(b) No later than sixty (60) days prior to the Commercial Operation Date, and the commencement of each Contract Year thereafter, Seller shall provide Buyer or Buyer's Agent with its non-binding written projection of all Scheduled Outages for the succeeding three (3) years (the "***Scheduled Outage Projection***") reflecting a

minimized schedule of scheduled maintenance during the Major Maintenance Blockout, which Scheduled Outage Projection shall at a minimum include all Scheduled Outages relating to (i) any Scheduled Outage related to compliance with any NERC Reliability Standards that pertain to Scheduled Outages for bulk electric system elements applicable to the Facility, or any portion thereof; (ii) any Scheduled Outage in excess of 20 MW of Contract Capacity during daylight hours; (iii) information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Agent of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally scheduled date of the Scheduled Outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer or Buyer's Authorized Representative with respect to the timing of Scheduled Outages, and Seller shall, to the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages to occur between October 1 and May 1 of each year and coincident with planned transmission outages, but not to overlap with the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. Without limiting the generality of the foregoing, Buyer shall have the right to cancel or delay any Scheduled Outage due to peak load conditions by providing notice to Seller at least three weeks in advance thereof; *provided*, that Seller shall not be obligated to agree to such cancellation or delay if such cancellation or delay would impact Seller's warranty of the equipment, cause the Facility to fail to comply with any Requirements of Law or Prudent Utility Practices, or cause unreasonable financial impact to the Facility. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled so that it occurs during the System Emergency.

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

(d) Consistent with Prudent Utility Practices, Seller shall at all times maintain the ability to continue to provide real-time data to Buyer to implement curtailments and adjust curtailment amounts in real-time if Seller's means of primary communication become unavailable at any point in time.

Section 4.9 Post-Option O&M Plan. Following the provision by Buyer of a notice regarding its intent to exercise its Project Purchase Option, and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement, Seller shall, to the extent not already being performed pursuant to the Operation and Maintenance Plan:

(a) devise and implement, or cause the Qualified Operator to devise and implement, an operations and maintenance plan, or implement an existing plan that includes the status of the Facility and each of the major components thereof in order to maintain such equipment in accordance with Prudent Utility Practices (the "***Post-Option O&M Plan***"). Such Post-Option O&M Plan shall be consistent with the requirements of any Financing Agreement in place as of such date. Seller shall keep, or cause the Qualified Operator to keep, records with respect to inspections, maintenance, and repairs. The Post-Option O&M Plan and all records associated therewith shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice; *provided* that

Buyer shall at all times comply with Seller's or the Qualified Operator's written safety and security requirements when present at the Facility;

(b) provide Buyer with a monthly written report describing the ongoing operations of the Facility during such month. This report shall set forth the status of the operations of the Facility or any component thereof, including any equipment or other operational or maintenance failures, defects or other issues and any repairs, replacements or other remediation provided or to be provided therefor in a form which is reasonably acceptable to Buyer; and by January 15 of each calendar year, update the Post-Option O&M Plan for the subsequent twelve (12) month calendar year period and submit the same to Buyer; and

(c) perform routine and preventive maintenance actions in accordance with all applicable manufacturers' instructions, the Quality Assurance Program, Prudent Utility Practice, and the Post-Option O&M Plan, including to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventive maintenance requirements for a period of the following two (2) calendar years, including the performance of maintenance in accordance with Section 4.8(a); (iii) schedule and assign routine maintenance during operations, planned outages, and maintenance that can be conducted during a Forced Outage or during an outage occurring as a result of curtailment notifications; (iv) conduct periodic maintenance to various equipment, and provide a report about any findings to Buyer; (v) conduct periodic Q/A and Q/C activities and inspections in accordance with Appendix I and provide reports thereof to Buyer; and (vi) hire subcontractors, as applicable, to meet the Facility's maintenance, betterment, and improvement needs.

Section 4.10 Reporting and Information. Commencing on the date Startup and Test Energy is first delivered to Buyer, Seller shall provide to Buyer (a) Monthly Reports of the operation of the Facility on or before the fifteenth (15^{th}) day of each month, which shall include (i) a performance summary of the month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor and availability (including actual availability vs. expected availability), (ii) reports of expected generation indicators of when a shortfall may occur; (iii) any regularly prepared operation and maintenance status reports of the Facility provided to WECC or any Facility Lenders; (iv) reports regarding the ongoing operations of the Facility during such month, which set forth the status of the operation of the Facility or any component thereof, including any equipment or other operational or maintenance failures, defects or other issues and any repairs, replacements or other remediation provided or to be provided therefor; (v) descriptions of weather, wind speed and average illumination, reasons for any downtime, maintenance or repairs, and curtailment periods during the applicable month; and (vi) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operation of the Facility as Buyer may, from time to time, reasonably request.

Section 4.11 Reporting and Information after Purchase Option Notice. Following the provision by Buyer of a notice regarding its intent to exercise the Project Purchase Option and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement, Seller shall:

(a) to the extent prepared in the ordinary course of business, provide Buyer with a draft budget for the Facility for the twelve (12) month period beginning on [July 1] of the applicable calendar year, which Buyer shall have the right to review and to provide comments thereon for consideration by Seller; and

(b) perform the following and report information regarding the following to Buyer: (i) administrative and periodic reporting, including (A) on a monthly basis, reporting of safety records, including OSHA recordable and non-recordable incidents, and Site safety meeting information; (B) on a monthly and annual basis, operational reports on various aspects of the Facility, including performance, capacity factor, comparison of actual to expected service availability of the Facility, wind speed, weather, and generation data (including reasons for any downtime), to confirm that the requirements of this Agreement have been met, which reports shall be in forms reasonably

acceptable to Buyer; (C) on an annual basis, Q/A and Q/C activities; (D) outage and curtailment (scheduled and unscheduled) notifications in accordance with Section 4.8(a) and Section 4.8(c); and (E) work performed on the Facility following the completion of any such work; and (ii) monthly reporting of: (A) overall operation and maintenance of the Facility; (B) repairs and preventive and maintenance actions taken; (C) administrative and on Site personnel support; (D) safety and health; (E) Q/A and Q/C activities; (F) work to be conducted during any planned outage; (G) Site safety and security measures in place; (H) usage of parts at the Facility; (I) ongoing and planned maintenance activities; (J) planning documents; (K) work completion logs, checklists, explanations and conformance documents; (L) productivity records; (M) environmental compliance; (N) training and qualification of personnel; (O) remote control and monitoring; (P) information technology services; (Q) spare parts and consumables for the Facility; (R) Permits and regulatory compliance documents; (S) NERC and FERC compliance; and (T) activities for betterment and improvement of the Facility to reduce long term main component replacement expenses.

Section 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 EDAM. Buyer shall register the Facility into the EIM and EDAM and Seller shall cooperate with Buyer in connection with such registration, including promptly providing necessary information, data and documentation for the registration. Seller shall notify Buyer regarding the expected Test Energy Period at least twelve (12) months prior to the start of the Test Energy Period. Seller's failure to provide sufficient information required to register the Facility into EIM and EDAM may result in an extension of the twelve (12) month timeframe, with no extension to other milestones.

ARTICLE V
COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

Section 5.1 In General.

(a) The Facility. Seller shall perform, or cause to be performed, all engineering, design, development and construction of the Facility in a good and workmanlike manner and in accordance with applicable standards, Prudent Utility Practices, all applicable Requirements of Law, the Quality Assurance Program, the Milestones and all other requirements of this Agreement. Seller warrants and guarantees that throughout the Delivery Term and at the time (if any) that Buyer exercises the Project Purchase Option: (i) the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction, (ii) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (iii) the Facility will comply in all respects with the requirements of this Agreement and all applicable Requirements of Law. Seller also warrants and guarantees that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in full compliance with all applicable standards, Prudent Utility Practices, Requirements of Law, the Quality Assurance Program and other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair or replace, consistent with and as required by Prudent Utility Practices, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with applicable manufacturers' recommendations and Prudent Utility Practices.

(b) Startup and Testing. Prior to the Commercial Operation Date and as a condition precedent to the achievement of the Commercial Operation Date, Buyer shall have the right to (and Seller's engineering, procurement and construction subcontracts shall provide for Buyer's right to):

(i) review and monitor Seller's and Seller's subcontractors' performance and achievement of all initial performance tests and all other tests required under the Facility construction contracts that must be performed in order to achieve completion, with respect to which the construction contracts shall provide that at least ten (10) Business Days before such tests begin Seller or Seller's subcontractors shall deliver to Buyer a schedule for the performance of such tests;

(ii) be present to witness such initial performance tests and review the results thereof; and

(iii) perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Buyer or Buyer's Authorized Representative, are appropriate and advisable to determine that the Facility equipment and all ancillary components of the Facility have been installed in accordance with this Agreement and the Facility construction contracts, all applicable standards, Prudent Utility Practices, applicable Requirements of Law, Seller's Quality Assurance Program and the Milestones.

(c) Access and Cooperation. Seller shall, and shall cause each of its subcontractors to:

(i) permit Buyer and Buyer's Authorized Representatives, advisors, engineers and consultants to observe, inspect and monitor, upon reasonable notice to Seller during normal working hours and subject to Seller's or its subcontractors' reasonable requirements and procedures in respect of confidentiality (subject to the provisions set forth in Section 14.21) and safety, all operations and activities, including the performance of the contractor(s) under the construction contract(s) pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and Commercial Operation and to make notes about and copy (and make such copies and notes available to Buyer) all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request;

(ii) make the personnel of, and consultants to, the subcontractors and Seller available to Buyer, Buyer's Agent, Buyer's Authorized Representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof;

(iii) otherwise cooperate in all reasonable respects with Buyer, Buyer's Agent, and Buyer's Authorized Representative, advisors, engineers and consultants in order to allow Buyer to exercise its rights under this Section 5.1; and

(iv) from and after the Commercial Operation Date, except in the event of a System Emergency, accommodate Buyer's requests to visit the Facility during Seller's regular business hours upon reasonable notice.

Section 5.2 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility, and witness of testing hereunder, is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observation with Seller, nor shall any such review or observation, or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or

reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including any review of the design, construction, operation or maintenance of the Facility or observation of testing by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

Section 5.3 Compliance with Standards; PMU Requirements.

(a) Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet (i) all of the requirements of this Agreement, (ii) all applicable standards and requirements of the latest revision of standards or requirements of the ASTM, ASME, ASCE, AWS, EPA, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, International Building Code, International Plumbing Code, Underwriters Laboratory Standards and the applicable local County Fire Department and National Fire Protection Agency standards and requirements, or their successors, (iii) all FERC-approved NERC Reliability Standards, (iv) any other codes, standards and operations and maintenance requirements applicable to the services, equipment, and work as generally shown in this Agreement and (v) all applicable Requirements of Law not specifically mentioned in this Section 5.3. Seller shall comply with all reporting requirements for the Facility required under applicable Requirements of Law, such as Energy Information Assessments (including providing such information to Buyer as required thereunder).

(b) Throughout the Delivery Term, the Parties shall comply with the PMU requirements as set forth in Appendix AC.

(c) Throughout the Agreement Term, all of Seller's personnel, systems, equipment, products, services, and subcontractors shall adhere to any physical and cyber-related security policies, standards, requirements and procedures applicable to the Facility under federal, state, or local laws, regulations or industry practices, including requirements that may be imposed by FERC, NERC, WECC, the Department of Energy, the EPA, or the Department of Homeland Security, as well as any applicable cyber-related security policies and procedures of Buyer's Agent to which parties engaged in energy sales transactions with Buyer's Agent are customarily subject and any applicable cyber-related security policy and procedures of the Participating Members, including NERC Critical Infrastructure Protection compliance requirements.

Section 5.4 Quality Assurance Program. As a condition of, and no later than the occurrence of the Commercial Operation Date, Seller shall develop and initiate a written quality assurance policy ("***Quality Assurance Program***") attached hereto as Appendix I. Seller shall maintain and comply with said Quality Assurance Program, and Seller shall cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

Section 5.5 Preservation of the Facility. Except as expressly permitted by this Agreement, Seller shall not sell or otherwise dispose of, or create, incur, assume, or permit to exist any Lien (other than the Permitted Encumbrances) on, any portion of the Facility or any other property or assets which are necessary for the operation, maintenance, and use of the Facility, without the prior written approval of Buyer.

Section 5.6 Performance Assurances.

(a) In accordance with Section 2.1(f) and Section 2.2.(c), Seller shall execute and deliver to Buyer an Acceptable Form of Performance Assurance in the amount of one hundred dollars ($100)/kW, which Acceptable Form of Performance Assurance shall be subject to replenishment as set forth in Section 5.6(d) below and shall guarantee Seller's obligations under this Agreement [and the Option Agreement] prior to the Commercial

Operation Date (the "***Development Security***"). Seller shall maintain the Development Security until Seller executes and delivers the Performance Security pursuant to Section 5.6(b), until the requirement to maintain the Development Security ceases under Section 5.6(c), or until sixty (60) days after termination of this Agreement, whichever occurs first.

(b) As a condition to Commercial Operation, Seller shall execute, deliver to Buyer and maintain an Acceptable Form of Performance Assurance in the amount of one hundred fifty dollars ($150)/kW, which Acceptable Form of Performance Assurance shall guarantee Seller's obligations under this Agreement [and the Option Agreement] from and after the Commercial Operation Date (the "***Performance Security***"). Seller may elect to use the Development Security as a component of the Performance Security by delivering notice thereof to Buyer and causing such Development Security to renew prior to the expiration thereof as required herein.

(c) If (i) upon the Commercial Operation Date, no damages or other amounts are due and owing to Buyer under this Agreement [and the Option Agreement], and Seller does not elect to use the Development Security as a component of the Performance Security, or (ii) this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Development Security is outstanding, then Seller is no longer required to maintain the Development Security.

(d) Buyer may draw on the Performance Assurance for any amount owed to Buyer due to Seller's obligations under this Agreement and the Option Agreement, including any liquidated damages. Promptly, and in no event more than five (5) Business Days following any draw by Buyer on the Performance Assurance, Seller shall replenish the amount drawn on the Performance Assurance such that the amount of the Performance Assurance is restored to the full amount set forth in Section 5.6(a) or Section 5.6(b), as applicable.

(e) Seller shall, from time to time as requested by Buyer or Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the Performance Assurance contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) Seller shall notify Buyer of the occurrence of a Downgrade Event with respect to an issuer of Performance Assurance, which notice shall be given by Seller within five (5) Business Days of obtaining knowledge of the occurrence of such event. If, at any time, (i) there shall occur a Downgrade Event with respect to an issuer of Performance Assurance or (ii) Buyer elects to terminate any relationship with such issuer pursuant to directives from any Governmental Authority applicable to Buyer or Participating Members, then Buyer may require that Seller replace the Performance Assurance from the issuer that has suffered the Downgrade Event or with whom the relationship has been terminated by Buyer with Performance Assurance from a Qualified Issuer within ten (10) days of notice from Buyer to Seller requesting such replacement Performance Assurance.

(g) Notwithstanding the other provisions of this Agreement, the Performance Assurance contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement and the Option Agreement.

Section 5.7 Compliance with Laws.

(a) Seller has been and will continue to be in compliance in all respects with all Requirements of Law applicable to it, including for the past five (5) years, applicable International Trade Laws;

(b) Seller has not received or entered into any citations, complaints, consent orders, or other similar enforcement orders, or received any written, or, to the knowledge of Seller, oral, notice from any Governmental Authority or any other written, or to the knowledge of Seller, oral notice that indicates non-compliance with applicable Requirements of Law, including for the past five (5) years, applicable International Trade Laws; and

(c) To the knowledge of Seller, there is no threatened legal, administrative, arbitral or other material proceeding, claim, investigation, suit or action by any Governmental Authority against Seller, nor is there any penalty, order or arbitration award imposed (or, to the knowledge of Seller, threatened to be imposed) upon Seller by or before any Governmental Authority, in each case in connection with an alleged violation of applicable International Trade Laws.

Section 5.8 Equipment Suppliers and Warranties

(a) [To be edited depending on technology type. For example, a solar contract would require that Seller only engage with Tier One solar panel manufacturers for the solar panels to be incorporated into the Facility. A "***Tier One***" solar panel manufacturer means a manufacturer whose photovoltaic-powered solar panels are financeable by a Qualified Issuer.]

(b) Seller shall use reasonable efforts to ensure that any equipment and supply contracts for [the solar panels, inverters/turbines and any other] major equipment for the Facility shall be fully assignable to, and be enforceable by, Buyer (including all warranties associated therewith) following Buyer's exercise of the Project Purchase Option.

(c) Buyer shall have the right to review all equipment supply contracts for the Facility to ensure that Seller has complied with the provisions of this Section 5.8.

Section 5.9 Decommissioning and Other Costs. Seller is responsible for all cost of decommissioning or demolition of the Facility and all environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition of the Facility unless Buyer shall have closed on its purchase of the Facility pursuant to the Option Agreement or by exercise of its Right of First Offer or Right of First Refusal pursuant to this Agreement.

Section 5.10 Taxes. Seller shall be responsible for and shall pay, before the due dates therefor, any and all Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, Capacity Rights, the Site, or any other assets of Seller, the sale or use of Facility Energy and Environmental Attributes and all Taxes related to Seller's income. If Buyer is required under any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from payments to Seller, Seller shall promptly reimburse Buyer for such amounts upon request. Further, if the Facility is exempt from one or more Taxes at any time and for any reason, and that exemption should be lost during the Agreement Term, Seller shall be responsible for any additional Taxes incurred as a result of the loss of that exemption.

ARTICLE VI
PURCHASE AND SALE OF POWER

Section 6.1 Purchases by Buyer.

(a) No earlier than [one hundred eighty (180)] days before the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall receive and purchase, all Startup and Test Energy for the price set forth in paragraph 1 of Appendix A, except as described in Section 6.8.

(b) On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall receive and purchase, all Facility Energy for the price set forth in or paragraph 2 (for Delivered Energy) or paragraph 3 (for Excess Energy) of Appendix A, except as described in Section 6.8.

(c) Notwithstanding the foregoing, in no event shall Buyer be required to purchase and receive at the Point of Delivery a quantity of Delivered Energy in any hour that exceeds the quantity of Delivered Energy that the Facility is capable of producing when operating at the Contract Capacity, unless Buyer agrees otherwise in its sole discretion.

Section 6.2 Point of Delivery. Seller shall deliver all Facility Energy to Buyer at the Point of Delivery. Buyer, or its designee, shall receive all Delivered Energy from Seller under this Agreement at the Point of Delivery.

Section 6.3 Startup and Test Energy. New Resource Implementation must be completed prior to the delivery of Startup and Test Energy. At least thirty (30) days before Seller reasonably expects to begin delivery of Startup and Test Energy, Seller will deliver to Buyer a notice (the "***Startup Notice***") of the anticipated first delivery of Startup and Test Energy, and a schedule of Seller's anticipated deliveries of Startup and Test Energy through the Commercial Operation Date and Seller will update such schedule from time to time in accordance with Prudent Utility Practices, but in no event less frequently than every [___] days. The period starting on the later of the date specified as the startup date in the Startup Notice and the date on which Seller delivers the first MWh of Startup and Test Energy and ending on the earlier of the Commercial Operation Date and the date of termination of this Agreement, is referred to as the "***Test Energy Period***".

Section 6.4 Buyer's Failure. Unless excused by Force Majeure or by the provisions of Section 6.8 or caused by Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of any Energy required to be received by Buyer under this ARTICLE VI, ARTICLE VIII or ARTICLE IX, Buyer shall pay Seller, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from price per MWh which would have been payable by Buyer for the Energy not received by Seller. "***Sales Price***" means the price at which Seller, acting in a commercially reasonable manner, resells the Energy or, absent a resale, the market price reasonably calculated by Buyer's Authorized Representative for the quantity of Energy not received by Buyer (adjusted for the difference in transmission costs, if any). Seller shall provide Buyer prompt written notice of the Sales Price together with back-up documentation.

Section 6.5 Nature of Remedy. The remedy set forth in Section 6.4 is the sole and exclusive remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

Section 6.6 Energy to Come Exclusively from Facility. Except as provided in ARTICLE IX, in no event shall Seller procure energy from sources other than the Facility for sale and delivery pursuant to this Agreement.

Section 6.7 Sales to Third Parties. Except as provided in this Section 6.7, Seller shall not sell or otherwise transfer any Facility Energy, Replacement Energy, Capacity Rights or Environmental Attributes to any Person other than Buyer during the Agreement Term. Seller may sell to Persons other than Buyer outside of Buyer's service area any Facility Energy or Replacement Energy that Seller is required to deliver to Buyer, but which Buyer is excused from receiving, or otherwise unable to receive, at the Point of Delivery or other applicable point of interconnection specified by Buyer or Buyer's Authorized Representative pursuant to Section 9.3 for delivery of Replacement Energy. Any purported sale or transfer in violation of this provision shall be null and void at inception and of no force or effect.

Section 6.8 Curtailment Requested by Buyer.

(a) Buyer, Buyer's Agent or Buyer's Transmission Provider may require Seller to reduce deliveries of all or any portion of the Facility Energy, and Seller shall comply with any such requirement of Buyer, Buyer's Agent or Buyer's Transmission Provider, at any time and for the duration specified by Buyer, Buyer's Agent or Buyer's Transmission Provider in a notice to Seller, including for curtailments required (i) due to a System Emergency; (ii) due to an event of Force Majeure, (iii) due to a Seller Caused Access Failure, (iv) due to Buyer's request, in Buyer's sole discretion, to curtail Startup and Test Energy, and (v) for system improvements or scheduled or unscheduled repairs or maintenance (other than due to a Force Majeure event as described in (ii) above), as defined in the sole discretion of whichever representative of Buyer provided the applicable notice (curtailments under preceding clauses (i), (ii),(iii), (iv), and (v), "***Non-Compensable Curtailments***"), (vi) due to Buyer's failure or inability to Schedule the Delivered Energy from the Point of Delivery (other than due to a Force Majeure event as described in (ii) above); and (vii) for any other reason in the sole discretion of whichever representative of Buyer provided the applicable notice (curtailments under preceding clauses (vi) or (vii), "***Compensable Curtailments***"). Curtailments shall be measured in five (5) minute increments and in a manner that is consistent with the scheduling procedures in accordance with Section 4.4 and Section 4.5. Seller shall be excused from delivering the reduced deliveries of Facility Energy described in the notice described in this subsection. Subject to Section 6.8(b), Buyer shall be excused from receiving the reduced deliveries of Facility Energy described in the notice described in this subsection.

(b) The Parties shall reasonably estimate the amount of curtailed Facility Energy that would have been delivered at the Point of Delivery during the Test Energy Period or any respective Contract Year, as applicable, had the Curtailments during the Test Energy Period or such Contract Year not occurred ("***Deemed Delivered Energy***").

(c) Buyer shall not pay Seller for any Non-Compensable Curtailments. For the avoidance of doubt, Buyer shall not pay Seller for any Deemed Delivered Energy calculated during any Non-Compensable Curtailments or during any period before the Commercial Operation Date.

(d) Buyer shall pay for any (i) Deemed Delivered Energy that is not Excess Energy during Compensable Curtailments as set forth in paragraph 2 of Appendix A and (ii) Deemed Delivered Energy that is Excess Energy for the price set forth in paragraph 3 of Appendix A.

(e) Seller shall provide Buyer with the capability to implement curtailments and adjust curtailment amounts in real time by means of setpoints received from Buyer's SCADA system. Seller shall install sufficient

measuring equipment at the Facility to collect data necessary to reasonably determine the amount of curtailed Facility Energy, including any Deemed Delivered Energy.

(f) Seller shall have back-up plans in place consistent with Prudent Utility Practices that enable Seller to continue to provide real-time data to Buyer to implement curtailments and adjust curtailment amounts in real-time if Seller's primary communication means become unavailable at any point in time.

Section 6.9 Withholding. Notwithstanding anything to the contrary contained in this Agreement, Buyer (and any other applicable withholding agent) shall be entitled to deduct and withhold (or cause the applicable withholding agent to deduct and withhold) from any payment payable pursuant to or contemplated by this Agreement any amounts required to be deducted and withheld with respect to the making of such payment under any Requirements of Law. To the extent that any amounts are deducted and withheld in accordance with this Section 6.9, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

ARTICLE VII
TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General. Seller shall arrange and be responsible for any Transmission Services required to deliver Facility Energy or Replacement Energy to the Point of Delivery. Seller shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Facility Energy to the Point of Delivery. Buyer shall arrange and be responsible for Transmission Services at and from the Point of Delivery, and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive Delivered Energy or Replacement Energy at the Point of Delivery. This includes creation by Seller and, as needed, revisions of electronic tags ("***e-tags***") associated with such Energy schedules. Seller shall provide additional information as reasonably requested by Buyer on e-tags or as reasonably necessary to facilitate Buyer's reporting requirements under RPS Law. Each Party shall designate an authorized Scheduler to effect the Scheduling of all Facility Energy or Replacement Energy. The contact information for Buyer's Scheduler and Seller's Scheduler as of the Effective Date shall be set forth in Appendix D and shall be revised by the Authorized Representative of the respective Party, as needed.

Section 7.2 Costs. Seller shall be responsible for any costs, expenses or charges imposed on or associated with the delivery of Facility Energy up to the Point of Delivery, including as related to control area services, inadvertent energy flows, transmission losses and the transmission of Facility Energy, and costs associated with transmission outages, congestion or curtailment. Subject to Section 6.8, Buyer shall be responsible for any costs, expenses or charges imposed on or associated with the delivery of Facility Energy at and from the Point of Delivery, including but not limited to those related to control area services, inadvertent energy flows, transmission losses and the transmission of Facility Energy, and costs associated with transmission outages, congestion or curtailment[; *provided*, if Buyer is not the Transmission Provider receiving Facility Energy at the Point of Delivery, then Seller shall pay all such costs and charges for which Buyer would otherwise be responsible to the extent of those which would reasonably be incurred by Buyer to transmit the Facility Energy to an approved point of interconnection on Buyer's system regardless whether the Facility Energy is in fact transmitted there].

Section 7.3 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy generated by the Facility prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Delivered Energy at and from the Point of Delivery. Seller shall deliver all Facility Energy, Replacement Energy, Capacity Rights and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Facility Energy, Replacement Energy, Capacity Rights and Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery; *provided*,

however, that title and risk of loss as to any Replacement Energy specified by Buyer to be delivered to a point or points of interconnection other than the Point of Delivery, pursuant to Section 9.3(a), and all of the associated Environmental Attributes shall pass from Seller to Buyer upon delivery of such Replacement Energy to such point or points.

ARTICLE VIII
ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Transfer of Environmental Attributes.

(a) For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, free and clear of all Liens, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Delivered Energy and Replacement Energy. Seller agrees to transfer and make available to Buyer such Environmental Attributes to the fullest extent allowed by applicable law immediately upon Seller's production or acquisition of the Environmental Attributes. 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 Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the relevant prices for Delivered Energy under ARTICLE VI, ARTICLE IX and Appendix A. If at any time Seller becomes obligated to obtain pollution or environmental credits or offsets in order to own, operate or maintain the Facility in compliance with the Requirements of Law, Seller shall ensure that such credits or offsets are obtained in Seller's own name and at Seller's sole cost and expense. In no event shall Seller use any Environmental Attributes to satisfy the foregoing obligation.

(b) Seller shall be responsible for matching, in accordance with all current WREGIS Operating Rules, all available and applicable NERC e-Tags pertaining to the corresponding REC before such REC is transferred to Buyer in WREGIS per the terms of this Agreement.

(c) For each month of the Delivery Term, Seller shall deliver and convey such quantity of RECs associated with the Energy delivered to Buyer and for which Seller has received payment from Buyer, within fifteen (15) Business Days after the end of the month in which the WREGIS Certificates for such RECs have been created by the proper transfer of such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, to Buyer into Buyer's WREGIS account, such that all right, title and interest in and to such WREGIS Certificates transfer from Seller to Buyer.

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

Section 8.3 Environmental Attributes. Upon the request of Buyer or Buyer's Authorized Representative, Seller shall take all actions and execute all documents or instruments necessary under the RPS Law and all other Requirements of Law, regulations, guidebooks (including the Guidebook) promulgated by the CEC or CPUC, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as

applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

Section 8.4 Use of Accounting System to Transfer Environmental Attributes. In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS to evidence the transfer of any Environmental Attributes under applicable laws or any voluntary program ("***WREGIS Certificates***"), associated with Facility Energy or Replacement Energy, in accordance with WREGIS reporting protocols and shall register the Facility with WREGIS. On or before the date that is thirty (30) days before the Commercial Operation Date, Seller shall deliver sufficient evidence to Buyer that it has prepared and registered all required documents and has taken all necessary steps for final WREGIS approval, including the notice of substantial completion or commercial operation date to WREGIS, as appropriate. Seller shall deliver to Buyer sufficient evidence that substantial completion of the Facility is verified with WREGIS, and it has provided WREGIS with notice of the Commercial Operation Date. After the Facility is registered with WREGIS, at the option of Buyer's Authorized Representative, Seller shall transfer WREGIS Certificates using the One-Time Inter-Accounts Transfer Method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees and transferring WREGIS Certificates to Buyer or Buyer's Agent, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates. Buyer is not a Qualified Reporting Entity as defined by the WREGIS Operating Rules for Seller. One-Time Inter-Accounts Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month. If WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Agent or Buyer's designees for purposes of any Environmental Attributes attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer or Buyer's Authorized Representative shall designate. If any of the foregoing is or becomes inconsistent with the WREGIS rules, the Parties shall reasonably cooperate to amend the foregoing procedures in a manner reasonably requested by Buyer and consistent with the then effective WREGIS rules.

Section 8.5 Further Actions Regarding Environmental Attributes. If WREGIS (or any successor thereto) is no longer available to provide the services described in Section 8.4, Seller shall, until such time as a substitute provider reasonably acceptable to both Parties is available to provide such services, continue to document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for Environmental Attributes (i) produced by the Facility or (ii) included with Replacement Energy for the preceding month. The form of attestation in the case of Energy generated by the Facility is set forth as Appendix E. At the request of Buyer or Buyer's Authorized Representative, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of the Environmental Attributes. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

Section 8.6 RPS and EPS Compliance.

(a) Seller warrants and guarantees that, during the Test Energy Period, and upon the achievement of the Commercial Operation Date and at all times thereafter, until the end of the Delivery Term, the Facility will meet or exceed the Compliance Requirements.

(b) From time to time and at any time requested by Buyer or Buyer's Authorized Representative, Seller will furnish to Buyer, Governmental Authority or other Persons designated by Buyer, all certificates and other documentation reasonably requested by Buyer or Buyer's Authorized Representative in order to establish compliance with the preceding sentence.

(c) If WREGIS, the CEC, or any Governmental Authority determines that any RECs purportedly delivered by Seller to Buyer under this Agreement are invalid or do not qualify as PCC1 RECs, then Seller shall pay Buyer for each MWh of Energy not meeting the Compliance Requirements in an amount equal to the sum of the (i) Market Price Index for such Energy and (ii) Green Value associated therewith.

Section 8.7 Change in Law. If there is a change in law during the Delivery Term that impacts the ability of the Facility to satisfy the Compliance Requirements, Seller will take all commercially reasonable actions to continue to satisfy Seller's warranty and guarantee under Section 8.6 to cause the Facility to satisfy the Compliance Requirements. If, despite taking such commercially reasonable actions, Seller is unable to satisfy its warranty and guarantee under Section 8.6, then, prior to Buyer exercising any other rights and remedies provided for herein, including termination of this Agreement for Default, or exercising rights and remedies otherwise available at law or equity, Buyer may elect in its sole discretion to pay Seller according to the Market Price Index, for time periods that are comparable to the time during which the Facility is not in compliance, whether a short-term period of noncompliance or a longer, permanent period of noncompliance, for the amount of Facility Energy or Replacement Energy that is delivered to Buyer.

Section 8.8 Change in Market Structure. If a regionalization or other major change to the market structure of the Western Interconnection occurs during the Agreement Term (other than a Change in Law addressed in Section 8.7 above), then the Parties agree to negotiate such modifications to this Agreement as may be necessary or appropriate to enable the Parties to continue to perform their respective obligations under this Agreement, while preserving, to the maximum extent possible, the existing benefits, burdens, and obligations set forth herein. Such negotiations shall commence promptly following the delivery by one Party to the other Party of a notice requesting such negotiations. Notwithstanding the foregoing, if a regionalization or other such market change occurs pursuant to the above, Buyer maintains the right to terminate this Agreement under Section 2.5(k).

ARTICLE IX
MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. If in any Contract Year, the amount of Delivered Energy and Deemed Delivered Energy is less than the Guaranteed Delivered Energy, as adjusted pursuant to Section 6.8, for such Contract Year ("***Shortfall Energy***"), then Seller shall make up any such shortfall of Delivered Energy and Deemed Delivered Energy in the one (1) Contract Year following the Contract Year in which the shortfall occurred (the "***Cure Period***"). The Cure Period for Shortfall Energy shall be extended on a day-for-day basis to allow Seller to make-up Shortfall Energy that resulted from the occurrence of an event of Force Majeure, but, in no event longer than one (1) Contract Year following the end of the Cure Period. During any Contract Year that is a Cure Period, the Delivered Energy from such Contract Year will not be counted toward the prior Contract Year's shortfall until such time as Seller has delivered the Guaranteed Delivered Energy for such Contract Year. Seller shall notify

Buyer if it determines at any time during a Contract Year that it will be unable to achieve the Guaranteed Delivered Energy during such Contract Year, and prior to making any delivery of Replacement Energy, Seller shall provide Buyer in writing details of the Replacement Energy, including the producing facility and its compliance status.

Section 9.2 No Excess Energy During Shortfall Periods. During any Contract Year in which there is Shortfall Energy owed to Buyer, all Delivered Energy or Deemed Delivered Energy that would otherwise be designated as Excess Energy during the Cure Period shall be used to make up Shortfall Energy until the shortfall is cured. The price for Delivered Energy used to satisfy the Shortfall Energy shall be paid for at the price for Delivered Energy for the Contract Year during which the shortfall occurred.

Section 9.3 Financial Settlement of Shortfall Energy. If Seller fails to make up the full amount of any Shortfall Energy by the end of the Cure Period, the Parties may mutually agree to financially settle Shortfall Energy via Shortfall Damages as outlined in Section 9.5. Should a mutual agreement not be reached within thirty (30) days after the end of the Cure Period, Seller shall be responsible for Replacement Energy as set forth in Section 9.3. At any time during a cure period, parties may mutually agree to financially settle a shortfall.

(a) If mutual agreement is not reached pursuant to Section 9.3, Seller shall within one hundred twenty (120) days after the Cure Period provide Buyer with that quantity of Replacement Energy that is sufficient to make up the shortfall in full. Seller shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Replacement Energy to the Point of Delivery; provided that the Replacement Energy shall be delivered to Buyer on a fixed twenty-four (24) hour per day delivery schedule specified by Buyer or Buyer's Authorized Representative, and, if Buyer or Buyer's Authorized Representative specifies a point or points of interconnection on Buyer's transmission system other than the Point of Delivery for delivery of any Replacement Energy, Seller shall Schedule or arrange for Scheduling services with its Transmission Providers to deliver such Replacement Energy to such specified point or points instead of the Point of Delivery.

(b) As used in this Agreement, "***Replacement Energy***" means Energy produced by a facility other than the Facility that, at the time delivered to Buyer, (i) meets the Compliance Requirements, and (ii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the period for which the Replacement Energy is being provided.

(c) If Seller fails to deliver Replacement Energy as described above, then Buyer may purchase Replacement Energy and notify Seller of the costs thereof, and Seller shall reimburse Buyer for Buyer's costs of such Replacement Energy. If Buyer elects to purchase Replacement Energy, and, despite using commercially reasonable efforts, cannot purchase Replacement Energy, Seller shall be responsible to pay Buyer the cover damages in an amount for each MWh of Shortfall Energy equal to Shortfall Damages as outline in Section 9.5.

Section 9.4 Application of Shortfall Energy or Replacement Energy. In the event of shortfalls in multiple Contract Years, any Shortfall Energy or Replacement Energy delivered by Seller shall be applied in priority to the earliest outstanding shortfalls hereunder until all shortfalls are satisfied.

Section 9.5 Shortfall Damages.

(a) For any Shortfall Energy that has not been cured with Delivered Energy or Replacement Energy in accordance with Section 9.1 and Section 9.3, Seller shall pay Buyer, as liquidated damages, an amount for each MWh of Shortfall Energy equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during the Contract Year of such Shortfall Energy, weighted by hourly Delivered Energy, and

(B) Green Value associated therewith, and (ii) the Contract Price (the "***Shortfall Damages***") within sixty (60) days following the Cure Period.

(b) Notwithstanding Seller's right to cure a shortfall, if a shortfall occurs in the Final Stub Year, Seller shall pay Buyer all Shortfall Damages calculated as of the date of Buyer's notice to Seller instructing Seller to make payment in lieu of curing such shortfall. Seller shall make such payment within five (5) Business Days of Buyer's notice instructing it to pay.

(c) The payment of Shortfall Damages shall not limit Buyer's rights to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before or after the failure to meet the Guaranteed Delivered Energy, including a Default under ARTICLE XIII, or (ii) recover any damages not directly attributable to the failure to deliver the Shortfall Energy.

ARTICLE X
CAPACITY RIGHTS

Section 10.1 Purchase and Sale of Capacity Rights. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. Buyer and Seller acknowledge and agree that the consideration for the transfer of Capacity Rights is contained within the relevant prices for Facility Energy. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

Section 10.2 Representation Regarding Ownership of Capacity Rights. Seller 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 any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it.

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

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

Section 11.1 Billing and Payment. Billing and payment for all Delivered Energy (including Startup and Test Energy) shall be as set forth in this ARTICLE XI.

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

(a) Invoice. Not later than the tenth (10^{th}) day of each month, commencing with the month following the month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer an invoice similar in form to Appendix X. Such form shall be mutually agreed to by the Parties at least ninety (90) days prior to the start of the Test Energy Period. Buyer shall have the right to modify such form during the Agreement Term.

(i) The invoice may include the amount of Delivered Energy, Compensable Deemed Delivered Energy, and Non-Compensable Deemed Delivered Energy as estimated by the Parties during the preceding month (with separate allocations for any Excess Energy and Replacement Energy) and Seller's computation of the amount due to Seller in respect thereof.

(ii) Seller shall calculate the amount of Energy so delivered and received during such month, subject to Buyer's approval.

(iii) The invoice shall contain a statement that the representations and warranties set forth in this Agreement remain true and correct as of the date of the invoice and that there exists no Default or any event that, after notice or with the passage of time or both, would constitute a Default. If any such Default or potential Default then exists, Seller shall list, in detail, the nature of the condition or event, the period during which it has existed and the action which Seller has taken, is taking, or proposes to take with respect to each such condition or event.

(iv) The invoice shall specify the amount of Buyer's Non-Compensable Curtailment hours incurred during the billing period in accordance with Section 6.8(b), as well as the cumulative total of Buyer's Non-Compensable Curtailment hours incurred during the current Contract Year and the prior Contract Year.

(v) The invoice shall show the Agreement number and City of Los Angeles Business Tax Registration Certificate Number and identify the material, equipment or services covered by the invoice.

(vi) Subject to Section 11.4, monthly invoices shall contain credits for any reimbursement to Buyer for the purchase of Replacement Energy under Section 9.3, if any. If, upon the expiration or termination date of this Agreement, Seller still owes to Buyer any amount for such reimbursement, not later than the [x] (x^{th}) day after the expiration or termination date of this Agreement, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified by Buyer or by any other means agreed to by the Parties, the amount due therefor.

(vii) The invoice shall specify the amount of money received by Seller, if any, associated with the sale of Energy to Persons other than Buyer as described in Section 6.7.

(viii) The invoice shall specify any other payments due to Buyer or Seller under this Agreement.

(ix) The invoice shall include any other data from time to time reasonably designated by either Party as relevant to the calculation of monthly invoices.

(x) Monthly invoices, to the extent applicable, shall be based on meter readings as described in Section 11.6.

(xi) Seller shall deliver attestations of Environmental Attribute transfers substantially in the form set forth in Appendix E to Buyer concurrently with such invoices sent pursuant to Section 11.2.

(xii) The invoice shall be sent to the address set forth in Appendix D or such other address as Buyer or Buyer's Authorized Representative may provide to Seller.

(xiii) Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period.

(b) Payment. Not later than the forty-fifth (45th) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such forty-fifth (45th) day is not a Business Day) Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such monthly invoice, subject to Section 11.3.

(c) WREGIS Withholding. If Buyer does not receive in Buyer's WREGIS account a WREGIS Certificate for each MWh associated with the Facility Energy within thirty (30) days of the date of the invoice per Section 11.2(a), Buyer shall have the right to withhold from any payment to Seller, an amount equal to thirty-five dollars ($35) per MWh for each undelivered WREGIS Certificate (such amount, the "***WREGIS Withhold Amount***"). Buyer shall withhold such WREGIS Withhold Amount until such time as the WREGIS Certificate associated with such MWh has been credited to Buyer's WREGIS account as set forth in Section 8.4.

Section 11.3 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "***Interest Rate***" shall mean the lesser of (i) 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 immediately preceding date of publication), plus two hundred (200) basis points, or (ii) the maximum rate permitted by applicable Requirements of Law. Buyer or Buyer's Authorized Representative may dispute an invoice at any time, *provided* that Buyer or Buyer's Authorized Representative provides Seller with a notification of such dispute, setting forth the details of such dispute in reasonable specificity.

Section 11.4 Buyer's Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to setoff against any amount due to Seller from Buyer under this Agreement or otherwise any amount due Buyer from Seller or any Seller Party under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.2 or Section 9.3(a) if and to the extent paid in the first instance by Buyer.

Section 11.5 Records and Audits. Seller shall maintain, and shall cause Seller's subcontractors and suppliers as applicable to maintain, all records pertaining to the management of this Agreement, related subcontracts and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly verify all costs claimed to have been incurred and services performed pursuant to this Agreement. If Seller, Seller's subcontractors or suppliers are required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All records shall be retained

and subject to examination and audit by the Authorized Auditors for a period of not less than four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at Seller's offices located at all reasonable times and without charge. The Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller, and Seller's subcontractors and suppliers, as applicable to the services provided under this Agreement, shall be subject at any time with fourteen (14) days' prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, *et seq*., accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review the Authorized Auditor's examination results or audit and respond to Buyer's Authorized Representative prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment. Seller shall contractually require all subcontractors performing services under this Agreement to comply with the provisions of this Section by inserting this Section 11.5 in each subcontractor contract and by contractually requiring each subcontractor to insert this Section 11.5 in any of its subcontract contracts related to services under this Agreement. In addition, Seller and its subcontractors shall also include the following language in each subcontractor contract: "The Southern California Public Power Authority is a third-party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of the Southern California Public Power Authority. The designation of the Southern California Public Power Authority as a third-party beneficiary of the audit provision shall not confer any rights or privileges on Seller, subcontractor or any other person/entity." Notwithstanding the foregoing, 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 Auditors 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 fifteen (15) days of notice to Seller of such costs and expenses.

Section 11.6 Electric Metering Devices.

(a) Seller shall cause the Facility Energy to be measured using Electric Metering Devices installed, owned and maintained by Seller at [the high side of the step-up transformer at the Facility substation (the "***Project Substation***")] and as depicted and labeled "Revenue Metering System" in the single-line diagram attached to this Agreement in Appendix V and the metering diagram attached to this Agreement in Appendix W, which diagrams shall be updated as a condition precedent to the achievement of the Construction Commencement Milestone (collectively, the "***Revenue Meter***"). If the Revenue Meter is not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Revenue Meter to the Point of Delivery. All Electric Metering Devices used to provide data for the computation of payments shall be sealed, and Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.6. Seller or its designee shall specify the number, type and location of such Electric Metering Devices.

(b) The Electric Metering Devices shall function at all times in compliance with the Guidebook, RPS Law, and Metering Policies. The Electric Metering Devices shall be capable of: (i) measuring back-feed kilowatts and generation kilowatts at revenue quality to provide telemetering to the ECC from the Project Substation, (ii) adjusting the measured values of Delivered Energy for loss compensation from the Project Substation to the Point of Delivery using the Transmission Line Loss Factor to virtually meter at the Point of Delivery for billing purposes, (iii) accurately metering back-feed load when generation output goes to zero, and (iv) conforming to the DNP 3.0 protocol and meeting N-1 redundancy (which dictates that if any one meter fails, the Electric Metering Devices will allow the missing telemetry data to be alternately sourced or calculated). Examples of N-1 redundancy compliant architecture include placing backup meters at the same point of metering or installing one meter at each branch (*i.e.*, gross, aux and net) so the missing telemetry data may be calculated as a difference.

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

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

(e) At Buyer's or Buyer's Agent's option, Buyer may install, own and operate Electric Metering Devices at the Project Substation and/or the Point of Delivery ("***Buyer's Check Meters***"). Seller shall, and shall cause each of its subcontractors to, grant to Buyer and Buyer's Agent rights of access to Buyer's Check Meters upon reasonable notice to Seller and during reasonable business hours. Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Buyer shall provide to Seller on a real-time basis read only access to Buyer's Check Meters. Buyer's Check Meters shall be for check purposes only and shall not be used for the measurement of Delivered Energy, except as provided in Section 11.6(d) above. The installation, operation and maintenance of Buyer's Check Meters shall be performed entirely by Buyer or Buyer's Agent at Buyer's sole cost and expense.

(f) Commencing on the first date on which Startup and Test Energy is produced by the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer read-only access to all Electric Metering Devices installed, owned and operated by Seller that are used to measure Delivered Energy.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 12.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

(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) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which Buyer is a party have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained; *provided* that further authorizations will be required for Buyer to exercise the Project Purchase Option, the Right of First Offer or the Right of First Refusal.

(d) 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 creditors' 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.

Section 12.2 Representations, Warranties and Covenants of Seller. Seller makes the following representations, warranties and covenants to Buyer:

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

(b) The execution, delivery and performance by Seller Parties of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfilment of and compliance with the provisions of this Agreement and the Ancillary Documents, have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained. No later than five (5) Business Days after the Effective Date, Seller shall deliver to Buyer (i) copies of all resolutions and other documents evidencing such limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct and complete, and (ii) an incumbency

certificate signed by the secretary of such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party.

(c) The execution and delivery of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and the Ancillary Documents, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller Party (except as contemplated hereby), and each Seller Party has obtained or shall timely obtain, at no expense to Buyer, all Permits, including, to the extent required, any FERC authorization, required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law.

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

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

(f) None of the Seller Parties is in violation of any Requirements of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect on the business, assets, operations, condition (financial or otherwise) or prospects of any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Ancillary Document.

(g) Seller shall inform all investors in Seller of the existence of this Agreement and all Ancillary Documents on or before the date of such investment in Seller.

(h) 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 Appendix R. Appendix 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.

(i) Seller has always been, is and will be a Special Purpose Entity.

(j) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement and the Ancillary Documents. No petition in Bankruptcy has been filed against any of the Seller Parties, and none of the Seller Parties nor any of their respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(k) All the assumptions made in the Non-Consolidation Opinion, including but not limited to any exhibits attached thereto, are true and correct. Seller has complied with all the assumptions made with respect to Seller in the Non-Consolidation Opinion.

(l) None of the Seller Parties has any reason to believe that any of the CEQA authorizations or other Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law will not be timely obtained in the ordinary course of business.

(m) All Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon the Seller Parties and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. None of the Seller Parties knows of any proposed Tax assessment against any of the Seller Parties that is not being actively contested by it in good faith and by appropriate proceeding.

(n) Seller owns or possesses, or will own or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of this Agreement and the Ancillary Documents and the transactions contemplated thereby, without any conflict with the rights of others.

(o) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any Facility Energy, Environmental Attributes, or Capacity Rights-related benefits except as provided herein.

(p) At all times after the Effective Date, Seller shall have Site Control. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control. Seller's assignment and transfer to Buyer of all of Seller's rights, title and interests to the Site do not require any approval or consent of any Person, except for such approvals or consents which have been obtained.

(q) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral.

(r) Seller shall not, at any time, incur or permit Facility Debt in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost.

(s) Seller shall provide to Buyer within fourteen (14) days after the end of each of calendar quarter during the Agreement Term, a certificate of an authorized officer of Seller substantially in the form attached hereto as Appendix T (each, a "***Quarterly Certificate***"), (i) certifying that there exists no Default or any event that, after notice or with the passage of time or both, would constitute a Default and (ii) attesting to the Facility Debt as being equal to or less than seventy percent (70%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including Seller's most recent annual and quarterly financial statements and a statement of the Facility's then-current Facility Debt and Facility Cost values.

(t) The representations and warranties described in Section 3.1(g) and Section 5.1(a) remain true and correct.

(u) Seller owns or possesses, or reasonably expects to obtain in the ordinary course of business or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of this Agreement and the Ancillary Documents and the transactions contemplated thereby, without any conflict with the rights of others, and Seller's use thereof does not infringe on the intellectual property rights of third parties.

(v) There are no investigations, inquiries, orders, hearings, actions or other proceedings by or before any Governmental Authority that are pending or, to the best of Seller's knowledge, threatened in connection with any Permit or Environmental Laws with respect to the Facility or the Site. Seller, or to Seller's knowledge any third party, has not used, released, generated, manufactured, produced or stored in, on, under or about the Facility or Site any Hazardous Materials that could reasonably be expected to subject Seller or Buyer to liability under any Environmental Laws, except for those Hazardous Materials used and stored in accordance with Environmental Laws. Seller has not by contract, or to Seller's knowledge, by operation of law, assumed any liability of any other Person arising under any Environmental Law or Permit or responsibility for, either directly or indirectly, the investigation or remediation of any condition arising from, or relating to, the release or threatened release of Hazardous Materials at the Facility or Site.

Section 12.3 Covenants of Seller Related to Real Property Agreements.

(a) Seller shall at all times maintain Site Control and keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with, by or on behalf of Seller from time to time pursuant to the Real Property Agreements, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, is grounds for a termination of Seller's rights under the Real Property Agreements.

(b) Subject to this Section 12.3(b), Seller may from time to time supplement the Real Property Agreements listed in Appendix M to reflect any terminated or transferred Real Property Agreements and to include such additional easements, rights-of-way and other Real Property Agreements as may be required by Seller to perform its obligations under this Agreement; provided that such action shall not reduce or have any other effect on the Contract Capacity, the Expected Annual Generation, the Guaranteed Delivered Energy, the amount of Facility Energy, or the Facility as described in this Agreement, or cause Seller to be out of compliance with its Permits. Seller shall provide Buyer with written notice of the termination, transfer or addition of any Real Property Agreements occurring prior to the Construction Commencement Milestone and prior written notice of any termination, transfer or addition of any Real Property Agreements occurring after the Construction Commencement Milestone, and the Parties shall revise Appendix M to reflect any such terminations, transfers or additions. Subject to this Section 12.3(b), any terminated or transferred Real Property Agreements shall no longer constitute Real Property Agreements following such termination or transfer. Any additional Real Property Agreements shall be subject to the terms and conditions of this Section 12.3. Following the Commercial Operation Date, Seller may not remove any portions of or rights or interests in the Real Property under the Real Property Agreements or amend or terminate any of the Real Property Agreements, or otherwise alter, diminish, or otherwise take actions that would adversely affect the Facility, unless (i) Buyer has provided prior written consent to Seller, such consent to be determined in Buyer's reasonable discretion, or (ii) Seller has provided a written certification to Buyer that such action shall not adversely affect Buyer's ability to exercise the Project Purchase Option or Seller's ability to perform its material obligations under this Agreement.

(c) Seller shall at all times prevent the imposition of any Liens or encumbrances, other than Permitted Encumbrances, on Seller's interest in the real property that is subject to the Real Property Agreements. In the event a Lien or encumbrance other than a Permitted Encumbrance is imposed on Seller's interest in any property subject to a Real Property Agreement, Seller shall give Buyer immediate notice thereof and shall take immediate action to release such Lien or encumbrance.

(d) Seller shall not consent, agree to or permit, or take or cause to be taken, any action or non-action to bring about any rescission or termination of, or amendment to, any of the Real Property Agreements, or to take

any action in connection with any of the Real Property Agreements that will impair or have an adverse effect on the rights, interest or security of Buyer, or elect to resolve any controversy, claim or dispute under the Real Property Agreements, or to assign, sublease, encumber, mortgage, or grant any security interest in or otherwise dispose of any of the Real Property Agreements or any portion thereof or interest therein without the consent of Buyer, except as permitted in this Agreement.

(e) Seller shall not develop or improve the Real Property other than so as to provide for the facilities and improvements of the Facility in accordance with this Agreement and the terms and conditions of any Permits and environmental documents.

(f) Seller shall provide Buyer with true and complete copies of the Real Property Agreements, which may be redacted to redact specific pricing information. Seller shall or shall cause the Lessor, if applicable, to timely and duly record in the land records of the applicable county or counties of the State of California, or as otherwise provided by applicable law, all Real Property Agreements, or memoranda of such Real Property Agreements, to the extent recordable under federal or state law, and shall promptly (and in no event five (5) Business Days thereafter) provide Buyer with true and complete copies of such recorded Real Property Agreements.

(g) Unless otherwise provided in the Consent and Agreement, to the extent that any Real Property Agreements prohibit assignment, or do not expressly permit assignment, of Seller's rights to cure a breach or default thereunder, Seller shall use commercially reasonable efforts to cause each such Real Property Agreement to provide a right for Buyer to cure any breach or default by Seller under such Real Property Agreement (subject to the prior right of any Facility Lender); *provided*, that using "commercially reasonable efforts" shall not require Seller to re-open negotiations with landowners for the Real Property Agreements unless Seller amends or otherwise modifies or supplements the Real Property Agreements (whether by way of amendment or Consent and Agreement) to include a cure right with respect to any Real Property Agreement on behalf of the Facility Lenders, in which case, Seller shall also request a similar cure right for Buyer. Seller shall give Buyer immediate notice of (i) any default notice received by Seller or the Lessor or delivered by Seller or the Lessor under any of the Real Property Agreements, or (ii) the commencement of any action or proceeding or arbitration pertaining to any Real Property Agreement. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller or the Lessor, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration in connection with a Real Property Agreement.

(h) Upon any payment by Buyer under any of the Real Property Agreements to cure any default of Seller or the Lessor thereunder, and thereby prevent termination of any of the Real Property Agreements, or the exercise of any other remedy of the other party or parties thereunder arising out of such default, Buyer shall be entitled to offset amounts otherwise due Seller pursuant to the monthly payment hereunder by the amount of such cure payment or remedy cost until Buyer has been fully repaid.

(i) As part of the monthly report provided under Section 4.3(b), Seller shall certify to Buyer, and shall provide Buyer with evidence, that the rent, fees or other payment payable by Seller under the Real Property Agreements and the Generator Interconnection Agreement have been paid prior to the date on which such rent, fees or other payments would be delinquent. If Seller does not provide Buyer with such certification or evidence for the applicable month and if such rent, fees or other payments have not been paid, Buyer, as beneficiary under the Development Security and the Performance Security, may, but shall not be obligated to, cure such default by Seller as provided under this Section 12.3.

Section 12.4 Covenants of Seller Related to Tax Financing.

(a) Seller shall provide Buyer with at least one hundred twenty (120) days' prior written notice of the reasonably likely occurrence of any consolidation, merger, or reorganization or other similar transaction, or series of similar transactions (other than, for the avoidance of doubt, any Tax Financing), involving Seller, any Upstream Equity Owner or the Ultimate Upstream Equity Owner.

(b) Seller shall provide Buyer with at least one hundred twenty (120) days' prior written notice of the consummation of a Tax Financing, which notice shall include (i) introductory and contact information about and for any potential Tax Equity Investors, (ii) a summary of the provisions related to, and the structure surrounding, the power to Control the management and policies of Seller, and any entity that is jointly-owned by any Upstream Equity Owner and such Tax Equity Investor arising in connection with the Tax Financing and (iii) a statement of the circumstances under which such provisions and structure could be modified by such Tax Equity Investor. Such notice shall be in addition to, and not in lieu of, any notice required under Section 14.7.

(c) In addition to the items listed in subparagraph (b) above, in the event of a Sale Leaseback Financing, Seller shall also provide Buyer with true and correct copies of all agreements with the Lessor (with confidential terms redacted).

(d) It shall be a Default (which shall be subject to cure only if such Default is reasonably capable of being promptly and completely cured by Seller, and if not capable of being promptly and completely cured by Seller, shall be an immediate Default without opportunity to cure hereunder) should Seller enter into a Sale Leaseback Financing unless the Lessor or Lessors thereunder and Seller shall have concurrently entered into an agreement with Buyer providing for (i) substantially the terms set forth in Appendix Y, (ii) an estoppel certificate certifying that this Agreement remains in full force and effect and binding on Seller and that each Real Property Agreement remains in full force and effect and binding on the third parties thereto, and (iii) a binding obligation of such Lessor or Lessors and Seller, upon any exercise by Buyer of its Project Purchase Option by delivery of the Purchase Option Exercise Notice as provided under [Section 2.5] of the Option Agreement, to terminate such Sale Leaseback Financing prior to the Closing of the purchase by Buyer of the Facility Assets (as such terms are defined in the Option Agreement) by the reconveyance of the Facility Assets or the Site, as applicable, by such Lessor or Lessors to Seller and the termination of the Lease of the Facility or the Site, as applicable, by such Lessor or Lessors and Seller, and the transfer upon the Closing of the Facility from such Lessor to Seller, and from Seller to Buyer, or directly from Lessor to Buyer, in either case, in accordance with the terms and conditions set forth in the Option Agreement.

(e) Seller shall deliver or cause to be delivered copies of all resolutions and other documents evidencing the actions taken to approve, execute and deliver such Sale Leaseback Financing agreements and any the documents required in Section 12.4(d), in each case certified by an authorized representative of any Seller Party as being true, correct and complete, and an incumbency certificate signed by the secretary of such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party.

Section 12.5 Additional Related Projects. Buyer shall have a right of first offer to evaluate and negotiate a power purchase agreement [and a purchase option agreement] for the output from projects that are currently under development by, or will be developed by, Seller that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment) or other facilities with the Facility. Should Buyer decline to pursue a power purchase agreement [and/or a purchase option agreement] for such additional project or projects, Seller shall not subsequently offer monetary or other terms for the same project or projects that are more favorable than those declined by Buyer to another buyer without first offering such monetary or other terms to Buyer and providing Buyer with at least [XXX] (XX) days to accept or decline such terms.

ARTICLE XIII
DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

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

(a) Buyer Payment or Performance Default. Failure by Buyer to make any payment or perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents (except for Buyer's obligations to receive Energy as and when required by this Agreement, the exclusive remedy for which is provided in Section 6.4) when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof from Seller.

(b) Seller Payment or Performance Default. Failure by any Seller Party to make any payment or perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents when and as due (other than any failure described in Section 13.1(h), (j), (m) and (n)) which is not cured within thirty (30) calendar days after receipt of notice thereof from Buyer.

(c) Buyer Breach of Representation and Warranty. Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification or other statement made by Buyer herein or in any Ancillary Document.

(d) Seller Breach of Representation and Warranty. Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification or other statement made by Seller or any Seller Party in this Agreement or any Ancillary Document.

(e) Buyer Bankruptcy. Bankruptcy of Buyer.

(f) Seller Party Bankruptcy. Bankruptcy of any Seller Party.

(g) Mortgage Default. A default occurred under the Mortgage, the Mortgage fails to be in full force and effect in accordance with the terms of this Agreement, Buyer does not have or ceases to have a valid and perfected Lien in the collateral purported to be covered by the Mortgage or Seller or any other Person contests the validity or enforceability of the Mortgage or any provision thereof in writing or denies that it has any further liability thereunder.

(h) Performance Assurance Failure. The failure of Seller to maintain the Performance Assurance in compliance with Section 5.5 or replace such Performance Assurance at least fifteen (15) Business Days prior to its expiration, unless alternative Performance Assurance that complies with the requirements of Section 5.6 is provided within ten (10) Business Days after notice sent by Buyer of any such failure; or, with respect to any obligor providing the Performance Assurance for the benefit of Buyer:

(i) the failure of such obligor to honor a drawing or make a payment thereunder;

(ii) such obligor fails to meet the acceptance of Buyer or there shall have occurred a Material Adverse Effect on the business, assets, operations, condition (financial or otherwise) or prospects of such obligor;

(iii) the Performance Assurance issued by such obligor shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement and each of the Ancillary Documents;

(iv) such obligor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Performance Assurance and in any such event, Seller fails to provide replacement Performance Assurance; or

(v) the Performance Assurance 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.

(i) Material Adverse Effect. There shall have occurred a Material Adverse Effect on the business, assets, operations, condition (financial or otherwise) or prospects of any Seller Party.

(j) Insurance Default. The failure of Seller to maintain and provide acceptable evidence of the required insurance for the required period of coverage as set forth in Appendix G.

(k) Fundamental Change of Seller. Except as permitted by Section 14.7, (i) Seller makes an assignment of its rights or delegation of its obligations under this Agreement or any Ancillary Documents, including the Option Agreement and the Lease, or (ii) a Change in Control occurs.

(l) Fundamental Change of a Seller Party other than Seller [or its Upstream Equity Owner]. Any Seller Party, other than Seller [or its Upstream Equity Owner], consolidates or amalgamates with, merges with or into or transfers all or substantially all of its assets to another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the "***Successor Entity***") fails to assume all the obligations of such Seller Party under this Agreement and the Ancillary Documents to which it or its predecessor was a party by operation of law or pursuant to an agreement satisfactory to Buyer; or such Successor Entity has a long-term unsubordinated debt rating that is lower than the rating of such Seller Party immediately prior to such consolidation, amalgamation, merger or transfer.

(m) Noncompliance with Buyer's and Participating Member's Business Policies. The failure of Seller to comply with the provisions set forth in Section 14.25.

(n) Failure to Provide Real-Time Data. The failure of Seller to provide any of the real-time data required to be delivered under Section 4.7, which failure is (i) due to the failure of Seller's equipment or otherwise in Seller's control, or operation or maintenance thereof, and (ii) not cured within twenty-four (24) hours after receipt of written email notice thereof from Buyer; *provided*, *however*, Seller shall have up to thirty (30) calendar days to cure such failure so long as such cure is not reasonably possible within twenty-four (24) hours and Seller is using continuous and diligent efforts to resolve such failure; *provided*, subject to Buyer's approval, which shall not be unreasonably withheld, conditioned or delayed, Seller shall have up to an additional (60) calendar days to cure such failure so long as (A) such cure is not reasonably possible within thirty (30) days and Seller is using continuous and diligent efforts to resolve such failure and (B) such cure can reasonably be expected to be cured within such extended cure period.

(o) CEC Certification Failure. Seller shall have failed to cause the Facility to be CEC Certified or shall not have delivered to Buyer evidence reasonably satisfactory to Buyer that the Facility is CEC Certified within one hundred eighty (180) days following the Commercial Operation Date.

(p) Multiple Shortfalls. Failure by Seller to deliver at least eighty percent (80%) of the Expected Annual Generation during any two (2) consecutive or non-consecutive Contract Years (other than the Initial Stub Year).

(q) Judgment Default. Any judgment, writ or warrant of attachment or execution, or similar process, is issued or levied against any property of Seller in excess of one hundred thousand dollars ($100,000), which is not released, vacated or fully bonded, or appealed or challenged without an obligation to bond, within sixty (60) days after its issue or levy.

(r) Real Property Agreement Default. Except as permitted under Section 12.3 or with Buyer's written consent, any Real Property Agreement fails to be in effect or is terminated for any reason, or amended in any material respect, and the same would have a Material Adverse Effect or limit in any way the exercise by Buyer of the Project Purchase Option.

(s) Commercial Operation Date Default. Failure by Seller to achieve the Commercial Operation Date by the GCOD; *provided*, that it shall not be a Seller Default under this Section so long as Seller is paying Daily Delay Damages during the one hundred eighty (180) day period following the GCOD; *provided*, *further*, that notwithstanding anything to the contrary, it shall be an immediate Default if the Commercial Operation Date has not been achieved by the Outside COD, unless due to the occurrence of a Force Majeure event.

Section 13.2 Default Remedy

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

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

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including termination of this Agreement pursuant to Section 13.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) applying all amounts available under the Performance Assurance against any amounts then payable by Seller to Buyer under this Agreement, (ii) terminating this Agreement pursuant to Section 13.3, (iii) exercising its rights under the Mortgage, subject to the provisions of this Agreement and such subordination and other intercreditor arrangements as it may have agreed to with the

Facility Lender, and (iv) exercising the Project Purchase Option. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13.3 Termination for Default

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

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

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

(d) The Non-Defaulting Party shall aggregate its Gains, Losses and Costs as so determined into a single net amount (the "***Termination Payment***") and notify the Defaulting Party thereof. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party will, within ten (10) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the amount of the Termination Payment shall be zero dollars ($0).

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 14.3. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party as and when required by this

Agreement, subject to the Non-Defaulting Party refunding, with interest at the Interest Rate, any amount determined to have been overpaid.

(f) For purposes of this Agreement:

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

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

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

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

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

(g) At the time for payment of any amount due under this Section 13.3, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement.

Section 13.4 Cure Rights of Facility Lender and Buyer. Buyer shall provide such consents to assignment, substantially in the form attached as Appendix Z, as may be reasonably requested by Seller or any Facility Lender (other than a Tax Equity Investor); *provided* that the terms of such financing or refinancing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement (such consent, the "***Consent and Agreement***"). The Consent and Agreement shall provide such Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and (if permitted under this Agreement) the opportunity to cure any such default, and shall require that the provisions of any Financing Agreement provide Buyer with the right, but not the obligation, at any time, to pay any or all amounts due from Seller thereunder, and to do any other act or thing required of Seller, in each case to cure any default of Seller thereunder, or to prevent the termination of such Financing Agreement or the exercise of any remedy by the Facility Lender thereunder that could preclude or impede Buyer from exercising its Project Purchase Option. Seller shall promptly repay Buyer for any costs or expenses incurred by Buyer in making any such payments or otherwise incurred by Buyer in connection with curing a default by Seller. In addition, Buyer shall, if reasonably requested by a Tax Equity Investor, provide a written consent and estoppel substantially in the form attached as Appendix Z providing such Tax Equity Investor with the right, but not the obligation, at any time, to pay any or all amounts due from Seller to Buyer hereunder, and to do any other act or thing required of Seller, in each case, to cure any default of Seller under this Agreement in a manner that is consistent with the applicable terms and conditions of this Agreement and the Option Agreement, and to provide a customary estoppel certificate, *provided* that the terms and conditions of any such consent, or any such estoppel certificate shall have no (and could not reasonably be expected to have any) adverse effect on Buyer's rights under this Agreement or the Option Agreement, and, except for a reasonable additional cure period for the Tax Equity Investor to cure a default of Seller as set forth

in the consent with such Tax Equity Investor, which additional cure period shall be no longer than the cure period afforded the Facility Lender, shall be consistent with the terms and conditions of this Agreement.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Authorized Representative. Each Party hereto shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "***Authorized Representative***"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. Prior to the Commercial Operation Date, the Authorized Representatives of each Party will meet periodically to discuss issues related to the sharing of information on the development, construction, design and operation and maintenance of the Facility. To the extent that an Authorized Representative's contact information is not provided in Appendix D, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

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

Section 14.3 Dispute Resolution

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

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

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

(d) As stated in Section 14.12, this Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the dispute resolution process set forth in this Section 14.13, parties to this Agreement must comply with California law governing claims against public entities and presentment of such claims.

Section 14.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents and take all further actions consistent with the provisions of this Agreement, which are reasonably necessary to effectuate the purposes and intent of this Agreement.

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

Section 14.6 Force Majeure

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

(b) The term "***Force Majeure***" means any act of God, labor disturbance that is reasonably expected to last beyond thirty (30) days, act of the public enemy, war, insurrection, storm, flood or a riot, fire or explosion at the Facility or directly affecting the Facility that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be overcome or avoided; *provided,* nothing in this clause (iv) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following: (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any renewable portfolio standard that may affect the value of the Energy purchased hereunder; (2) events arising from the failure by Seller to construct, operate or maintain the Facilities in accordance with this Agreement; (3) any increase of any kind in any cost, including inflation, or imposition of

any Taxes, tariffs or duties; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Energy at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service except as otherwise expressly provided in Section 14.6(d); (7) failure of third parties to provide goods or services essential to a Party's performance; (8) Facility or equipment failure of any kind; (9) any changes in the financial condition of Buyer, any Seller Party, the Facility Lender or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement; (10) Seller's inability to obtain sufficient fuel, including due to lack of wind, sun or other fuel source of an inherently intermittent nature, or power to operate the Facility; (11) the COVID-19 pandemic or the effects or impacts of the COVID-19 pandemic; (12) any change in the enforcement or interpretation of any Requirements of Law; (13) general constraints on the global supply chain; or (14) Withhold Release Orders issued by United Stated Customs and Border Protection and any similar orders, regulations or restrictions on the import of goods.

(c) The affected Party shall deliver to the other Party, on an ongoing basis, regular updated reports containing the foregoing information and any additional documentation and analysis supporting its claim regarding Force Majeure promptly after such information becomes available to the affected Party. The affected Party shall use commercially reasonable efforts to (i) mitigate the duration of, and costs arising from, any suspension of, delay in, or other impact to, the performance of its obligations under the Agreement and (ii) continue to perform its obligations hereunder not affected by such event. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure.

(d) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment or other interruption of Transmission Service for any Energy at any time unless, in the case of Buyer, the curtailment or interruption is due to a Force Majeure; *provided* that in the case of Buyer's curtailment of Startup and Test Energy, to the extent that such curtailment caused delays that prevented Seller from achieving Commercial Operation prior to the GCOD, such curtailment could be grounds for Seller to raise a claim of Force Majeure.

(e) For purposes of this Agreement, a Force Majeure shall be deemed to prevent and excuse Buyer from receiving Energy at the Point of Delivery under either of the following two circumstances: (i) if Buyer is the Transmission Provider providing Transmission Services from the Point of Delivery to the approved point of interconnection on Buyer's system, and the Force Majeure prevents Buyer from receiving Energy at the Point of Delivery; or (ii) if Buyer is not the Transmission Provider providing Transmission Services from the Point of Delivery to the approved point of interconnection on Buyer's system, either (A) the Force Majeure prevents the Transmission Provider from receiving Energy at the Point of Delivery, or (B) the Force Majeure prevents Buyer from receiving Energy at the approved point of interconnection on Buyer's system.

(f) If, based on a Force Majeure Notice, the unaffected Party reasonably concludes that a Force Majeure or its impact on the affected Party or the Facility will extend the GCOD (i) for a period of [two hundred forty (240)] or more consecutive calendar days, or (ii) for an aggregate period of [three hundred sixty-five (365)] consecutive or non-consecutive calendar days, the unaffected Party shall have the right to terminate this Agreement effective upon notice to the affected Party.

Section 14.7 Assignment of Agreement; Change in Control

(a) Buyer may from time to time and 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.

(b) Except as set forth in this Section 14.7, Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement 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.

(c) Seller shall not sell or transfer the Facility or the Facility Assets to any Person other than a Person to whom Seller assigns this Agreement and its portion of the Ancillary Documents in accordance with this Section 14.7, other than a Sale Leaseback Financing (for which notice is required), without the prior written consent of Buyer (and in such case Seller may only transfer the Facility and Facility Assets in whole and not in part), provided that any such sale or transfer shall be in compliance with the provisions of Section 12.4(d) and subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 14.22, or any transfer of any Real Property Agreements permitted pursuant to Section 12.3. Any purported sale or transfer in violation of this Section 14.7(c) shall be null and void and of no force or effect.

(d) Notwithstanding the provisions of Section 14.18, Buyer's consent shall not be required for Seller to collaterally assign this Agreement for the sole purpose of financing exclusively this Facility to any Facility Lender; *provided, however,* that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement. Seller shall provide Buyer with ninety (90) days' prior notice of any such assignment to any Facility Lender. 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 Energy, Capacity Rights or Environmental Attributes (not including the proceeds thereof) to any Facility Lender.

(e) To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall provide such consents to assignment (in form and substance satisfactory to Buyer[and the Los Angeles City Attorney]) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; *provided, however,* that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement.

(f) Any collateral assignment is prohibited that causes Facility Debt, in the aggregate, to exceed seventy percent (70%) of the Facility Cost as of the date of the collateral assignment.

(g) In no event shall Buyer be liable to Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however,* that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of all or any portion of the Facility by Facility Lender shall be made only to an entity that is acceptable to Buyer and has financial qualifications and operating experience equivalent to Seller.

(h) Seller shall provide ninety (90) days' written notice to Buyer prior to the occurrence of any Change in Control or other transactions or series of transactions involving Seller with respect to any Upstream Equity Owner of Seller holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to Control the management and policies of Seller.

(i) A Change in Control is permitted if (i) Buyer has given prior written consent to the transaction or transactions constituting the Change in Control, and (ii) concurrently with the transaction or transactions

constituting the Change in Control, if there is a successor entity, such successor entity executes a written assumption agreement in favor of Buyer pursuant to which such successor entity shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents, and agree to be bound by all the terms and conditions of this Agreement and the Ancillary Documents, as applicable.

(j) Buyer's Authorized Representative is authorized to grant the consents contemplated by this Section 14.7 on behalf of Buyer.

(k) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7.

(l) Seller shall reimburse Buyer for the incremental direct expenses incurred by Buyer in the review of Change in Control or other transactions or series of transactions involving Seller with respect to any Upstream Equity Owner of Seller holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to Control the management and policies of Seller.

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

Section 14.9 Attorneys' Fees and Costs. Both Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement. Notwithstanding the foregoing, to the extent Buyer incurs legal costs in order to facilitate a Sale Leaseback Financing under Section 12.4(c) or the collateral assignment or pledge of this Agreement under Section 14.7, to evaluate whether the provisions of the Right of First Offer apply or whether a Change in Control has occurred, or such other action or review that is at the request of Seller, including in Section 13.4, Section 14.7(i) or Section 14.22, or as may be required due to the actions or omissions of Seller, Seller shall pay or reimburse Buyer's reasonable and documented legal costs therefor to evaluate whether the provisions of the Right of First Offer apply or whether a Change in Control has occurred, or such other action or review that is at the request of Seller, including in Section 13.4, Section 14.7(i) or Section 14.22, or as may be required due to the actions or omissions of Seller, Seller shall pay or reimburse Buyer's reasonable and documented legal costs therefor.

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

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

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

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

Section 14.14 Execution in Counterparts and Electronic Signatures. This Agreement may be executed in one or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by LADWP) and sent by email shall be deemed original signatures.

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

Section 14.16 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. 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 hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

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

Section 14.18 Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties hereto. Nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third-party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein.

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

(a) Indemnification. Seller undertakes and agrees to indemnify and hold harmless Buyer, Buyer's Members, and all of their respective departments, commissioners, council members, officers, agents, employees, advisors, Authorized Representatives, and assigns and successors in interest (collectively, "***Indemnitees***"), and, at the option of Buyer, defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages (including indirect, consequential, or incidental), demands,

judgments, costs, expenses, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, including but not limited to attorneys' fees (including allocated costs of internal counsel) or other monetary remedies and costs of litigation, obligation or liability of any kind or nature whatsoever, in any manner 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 but not limited to any such performance, non-performance, breach, act, error or omission or willful misconduct that results in intellectual property infringement or leads to death, bodily injury or personal injury to any person, including Seller's employees and agents or third persons, or damage or destruction to any property of any kind or nature whatsoever, of either party or third person, or loss of use (hereinafter "***Indemnified Liabilities***"), except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee. The provisions of this paragraph shall be in addition to, and not exclusive of, any other rights or remedies which Indemnitees have at law, in equity, under this Agreement or otherwise. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection may be unenforceable in whole or in part because they are violative of any law or public policy, Seller shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

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

(c) Insurance. Seller shall obtain and maintain the Insurance coverages as provided in Appendix 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 Appendix G are in full force and effect. Acceptable evidence of the insurance required in Appendix G must be on file with Buyer's Risk Management Section and must be maintained as current and in force in order to receive payment under this Agreement.

(d) Condemnation or Other Taking. Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, the Facility Assets or any portion thereof. Buyer may participate in any such proceeding, and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Facility, the Facility Assets or any portion thereof shall either, at the discretion of Buyer, be paid directly to Buyer (including damages and interest) in the amount of the loss in value of this Agreement to Buyer resulting from such condemnation or taking, or applied toward the repair, restoration, reconstruction or replacement of the Facility.

(e) Limitation of Liability. EXCEPT TO THE EXTENT INCLUDED IN THE LIQUIDATED DAMAGES OWED BY SELLER, IN SELLER'S INDEMNIFICATION OBLIGATIONS OR IN OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, BUYER, OTHER INDEMNITEES AND SELLER SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER

CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY AT LAW OR IN EQUITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, OR ANY OF SELLER'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by 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, that are clearly marked "Confidential " at the time a Party shares such information with the other Party ("***Confidential Information***"). The provisions of this Section 14.21 shall survive for one (1) year after the date of termination of this Agreement, except for information marked by Buyer or Participating Member as critical energy infrastructure information (or CEII), which shall survive indefinitely. Notwithstanding the foregoing, information shall not be considered confidential which (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

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

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

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirements of Law, including without limitation 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. If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, order, ruling or other Requirements of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(c) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California joint powers authority, and each Participating Member is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250, *et. seq.* ("***CPRA***"), and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950, *et. seq.* ("***Brown Act***"). Confidential Information of Seller provided to Buyer pursuant to this Agreement will become the property of Buyer and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to the CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support.

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

Section 14.22 Right of First Offer and Right of First Refusal . Buyer shall have a "***Right of First Offer***" (or "***ROFO***") and a "***Right of First Refusal***" (or "***ROFR***") for any proposed sale of all of the Facility or the Facility Assets or one hundred percent (100%) of the interests held directly or indirectly by Seller with respect to the Facility (any "***Disposition***"); *provided* that the ROFO and ROFR shall not (a) apply to any Tax Financing or Sale Leaseback Financing, (b) apply to sales of any interests in Seller to any Affiliate of Seller, (c) apply to sales in connection with the exercise of a Facility Lender's remedies pursuant to any Financing Agreement to a Qualified Transferee, (d) apply to any transfer of any Real Property Agreements permitted pursuant to Section 12.3(b) and Section 12.3(d), or (e) limit Buyer's right to exercise the Project Purchase Option.

(a) Seller shall not consummate any Disposition without complying with the provisions of this Section 14.22. Prior to Seller consummating any Disposition, Seller shall provide notice to Buyer of Seller's proposed transaction, including the proposed purchase price and basic terms and conditions associated therewith (a "***Proposed Sale Notice***"). Upon receipt of a Proposed Sale Notice, Buyer shall have seventy-five (75) days in which to notify Seller that Buyer may purchase the Facility Assets from Seller (a "***Proposed Purchase Notice***"). If Buyer provides Seller with a Proposed Purchase Notice, then unless and until Seller sends a notice to Buyer rejecting Buyer's proposed purchase price ("***Rejection Notice***"), the Parties shall undertake for a period of up to one hundred eighty (180) days after the date of Buyer's Proposed Purchase Notice to reach an agreement on the terms and conditions of a sale of the Facility Assets to Buyer and to close on the sale of such Facility Assets within ninety (90) days thereafter, which ninety (90) days may be extended to the extent required to obtain funding and

any necessary third-party or governmental approvals (including approval from a Participating Member's board or city council).

(b) If (i) Buyer does not provide a Proposed Purchase Notice to Seller, (ii) Seller issues a Rejection Notice or (iii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer and close on such sale within the time periods set forth in Section 14.22(a), then Seller shall be free to negotiate a Disposition to any third party, subject to the ROFR; *provided*, *however*, that (A) any Disposition shall include the assignment of this Agreement and Seller's rights under the Ancillary Documents (in accordance with Section 14.7), (B) prior to consummating any such Disposition, Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "***Notice of Proposed Third Party Sale***"), and (C) a purchase agreement with respect to such Disposition is executed within one hundred eighty (180) days after the delivery of the Proposed Sale Notice, and such purchase agreement closes within ninety (90) days thereafter, which ninety (90) day period may be extended to the extent required to obtain any necessary third-party or governmental approvals. If the proposed purchase price set forth in the Notice of Proposed Third Party Sale is equal to or less than ninety-five percent (95%) of the purchase price included in the Proposed Purchase Notice or negotiated in connection with Buyer's exercise of the ROFO pursuant to Section 14.22(a), or otherwise on terms that are materially better than those last offered by Buyer, then Buyer shall have forty-five (45) days to exercise its ROFR to purchase the Facility Assets on substantially similar terms to those set forth in the Notice of Proposed Third Party Sale, subject to any modifications required to conform the transaction to requirements for transactions entered into by public agencies. If Buyer exercises the ROFR, then Buyer and Seller shall attempt to reach agreement on the terms and conditions of a purchase and sale agreement within one hundred eighty (180) days after Buyer's submittal of the ROFR and close within ninety (90) days thereafter, which such ninety (90) day period may be extended to the extent required to obtain funding or any necessary third party or governmental approvals (including any approvals required by the Participating Members' board or city council). If the Parties cannot reach agreement within one hundred eighty (180) days after Buyer's submittal of the ROFR, Seller may consummate the proposed Disposition to the third party; *provided* that a purchase agreement is executed within one hundred eighty (180) days after delivery of the ROFR and such purchase agreement closes within ninety (90) days thereafter, which ninety (90) day period may be extended to the extent required to obtain any necessary third party or governmental approvals. If Buyer does not elect to exercise its ROFR and purchase the Facility Assets within such forty-five (45) days or if the proposed purchase price set forth in the Notice of Proposed Third Party Sale is greater than ninety-five percent (95%) of the purchase price included in the Proposed Purchase Notice, then Seller shall be free to consummate the Disposition; *provided* that (A) such any sale of the Facility Assets to a third party shall include the assignment of this Agreement and Seller's rights and obligations under the Ancillary Documents, and (B) a purchase agreement is executed within one hundred eighty (180) days after Seller's issuance of the Notice of Proposed Third Party Sale and such purchase agreement closes within ninety (90) days thereafter, which ninety (90) day period may be extended to the extent required to obtain any necessary third-party or governmental approvals.

(c) If Seller fails to (i) present a Notice of Proposed Third Party Sale within one hundred eighty (180) days after the expiration of the ninety (90) day period set forth in Section 14.22(a), or (ii) consummate the sale of the Facility Assets to a third party within forty-five (45) days after the expiration of the forty-five (45) day period set forth in Section 14.22(b), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO process and the ROFR process) hereunder before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets.

Section 14.23 Mobile-Sierra. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections

824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term.

Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties.

The Parties also agree that, absent prior agreement in writing by both Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section 14.23 is unenforceable or ineffective as to such Party), a non-Party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review that requires FERC to find an "unequivocal public necessity" or "extraordinary circumstances where the public will be severely harmed" to modify a contract, as 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).

Section 14.24 Service Contract. The Parties intend that this Agreement will qualify as a "Service Contract" as such term is used in Section 7701(e) of the Tax Code.

Section 14.25 Buyer and Participating Member Business Policies. Seller acknowledges that its agreement to abide by the business policies of Buyer and the Participating Members is material to Buyer's decision to enter into this agreement, and accordingly, Seller agrees that it will comply with the following, as such policies may be amended or updated from time to time:

(a) Recycling Policy. Seller shall submit all written documents on paper with a minimum of thirty (30) percent post-consumer recycled content. Existing company/corporate letterhead/stationery that accompanies these documents is exempt from this requirement. Documents of two or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to LADWP.

(b) Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Agreement is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in the Los Angeles Administrative Code (**"LAAC"**) Section 10.8 *et seq*., as amended from time to time.

(i) Seller shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the City of Los Angeles. In performing this Agreement, Seller shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national

origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

(ii) The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Agreement by reference.

(iii) The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the "Equal Employment Practices" provisions of this Agreement.

(iv) The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Agreement by reference and will be known as the "Affirmative Action Program" provisions of this Agreement.

Any subcontract entered into by Seller for work to be performed under this Agreement must include an identical provision.

(c) Small Business Enterprises ("***SBEs***") / Disabled Veteran Business Enterprises ("***DVBEs***") Participation Program.

(i) It is the policy of LADWP, which Buyer must comply with, to provide SBEs, DVBEs, Emerging Business Enterprises ("***EBEs***"), Women-Owned Business Enterprises ("***WBEs***"), Minority-Owned Business Enterprises ("***MBEs***"), Disadvantaged Business Enterprises ("***DBEs***"), Lesbian, Gay, Bisexual, or Transgender Business Enterprises ("***LGBTBEs***") and all Other Business Enterprises ("***OBEs***") an equal opportunity to participate in the performance of all Buyer contracts.

(ii) LADWP's overall annual SBE and DVBE participation goals are set at twenty-five percent (25%) and three percent (3%), respectively. Seller shall assist Buyer in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including SBEs, DVBEs, EBEs, WBEs, MBEs, DBEs, and LGBTBEs have an equal opportunity to compete for and participate in the work being requested by this Agreement.

(iii) Seller shall notify LADWP if Seller is a certified SBE, DVBE, EBE, WBE, MBE, DBE, or LGBTBE. Seller shall provide to Buyer (A) the company name, contact person, address, and telephone number of each proposed subcontractor that qualifies as an SBE, DVBE, EBE, WBE, MBE, DBE, or LGBTBE, and (B) copies of all certifications of such subcontractor as an SBE, DVBE, EBE, WBE, MBE, DBE, or LGBTBE, as applicable.

(d) Child Support Policy. Seller shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, Seller shall fully comply with all applicable State and Federal employment reporting requirements. Failure of Seller to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of Seller to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the Seller under this Contract. Failure of Seller or principal owner to cure the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by Seller for work to be performed under this Contract must include an identical provision.

(e) Iran Contracting Act of 2010. In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at $1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit" in the form attached to Appendix N.

(f) Current Los Angeles City Business Tax Registration Certificate Required. For the duration of this Agreement, Seller shall maintain valid Business Tax Registration Certificate(s) as required by the City of Los Angeles' Business Tax Ordinance, Section 21.00 *et seq*. of the Los Angeles Municipal Code ("***LAMC***"), and shall not allow the Certificate to lapse or be revoked or suspended.

(g) Taxpayer Identification Number ("***TIN***"). Seller has provided its TIN to Buyer in writing. No payment will be made to Seller under this Agreement without a valid TIN.

(h) Contractor Responsibility Ordinance. Seller agrees to comply with the requirements of the Contractor Responsibility Ordinance ("***CRO***"), codified at LAAC § 10.40 *et seq.*, and sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix N related to the CRO and any certifications attached thereto.

(i) Sweat-Free Procurement Ordinance. Seller agrees to comply with the requirements of the Sweat Free Procurement Ordinance (**"*SFPO*"),** codified at LAAC Section 10.43 *et seq.*, and sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix N related to the SFPO and any certifications attached thereto. In the case of impracticality in any provisions of the form due to the substitution of Buyer for the City of Los Angeles, Buyer will reasonably accommodate changes or substitutions in the requirements of the form as necessary to accomplish the purpose of the SFPO.

(j) Labor Laws. Seller and Seller's agents, employees and subcontractors shall, in connection with their performance of this Agreement or their work in respect of the Facility, comply with all applicable local, state, and federal labor and employment laws, including the Davis-Bacon Act of 1931, affecting the hours of work, wages and other compensation of employees, nondiscrimination and other conduct of the work. Workers at the Facility shall be paid not less than the prevailing wages required under local labor and employment laws, if applicable.

(k) Los Angeles Municipal Lobbying Ordinance. Seller agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance (LAMC Section 48.01 *et. seq.*) if Seller qualifies as a lobbying entity under the Los Angeles Municipal Lobbying Ordinance.

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

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Date: _____

By:_____
[SCPPA President]
President

Attest:_____
[SCPPA Secretary]
Secretary

Approved as to legal form:

By: _____
[SCPPA General Counsel]
General Counsel

[SELLER]

By:_____
Name: _____
Title:_____
Date:_____