



SMALL RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Buyer: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Seller:

Facility: [Name, location, size]

A. Transaction

Product: PCC 1 Energy and associated Environmental Attributes and Capacity Attributes

Guaranteed Installed Capacity:

Guaranteed Construction Start Date:

Guaranteed Commercial Operation Date:

Contract Price:

Delivery Term:

Deliverability:

- Full Capacity Delivery Service
- Energy only

B. Milestones

Site Control:

Permitting:

Phase I and II Interconnection study results:

Executed Interconnection Agreement:

Financial Close:

Construction Start:

Mechanical Completion:

Initial Synchronization:

Network Upgrades completed:

Commercial Operation Date:

C. Seller Collateral:

Development Assurance: \$[]/kW of Guaranteed Capacity

Performance Assurance: \$[]/kW



D. Notices:

<p>Buyer: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF</p>	<p>Seller:</p>
<p>All Notices: 525 Golden Gate Ave, 7th Floor San Francisco, CA, 94102 Attn: Contract Administration Phone: Email:</p>	<p>All Notices: Phone: Email:</p>
<p>Federal Tax ID Number:</p>	<p>Federal Tax ID Number: DUNS Number:</p>
<p>Invoices: Attn: Phone: Email:</p>	<p>Invoices: Attn: Phone: Email:</p>
<p>Scheduling: Attn: Phone: Email:</p>	<p>Scheduling: Attn: Phone: Email:</p>
<p>Payments: Attn: Phone: Email:</p>	<p>Payments: Attn: Phone: Email:</p>
<p>Wire Transfer: BNK: ABA (ACH): ACCT:</p>	<p>Wire Transfer: BNK: ABA: ACCT:</p>
<p>Credit and Collections: Attn: Phone: Email:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Attn: Phone: Email:</p>	<p>Credit and Collections: Attn: Phone: Email:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Attn: Phone: Email:</p>

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1: DEFINITIONS.....	1
ARTICLE 2: CONDITIONS PRECEDENT AND TERM	12
2.1 Conditions Precedent to Term of Agreement	12
2.2 Term, Delivery Term, and Extension.....	13
2.3 Extended Delivery Term and Purchase Option.....	Error! Bookmark not defined.
ARTICLE 3: PURCHASE AND SALE OF PRODUCT	14
3.1 Purchase and Sale.....	14
3.2 Contract Price	14
3.3 Contract Quantity.....	15
3.4 Guaranteed Energy Production and Minimum Deliveries.....	15
3.5 Environmental Attributes	16
3.6 Capacity Attributes and Resource Adequacy	18
3.7 Compliance Cost Cap.....	19
3.8 Expansion Facility and Expansion Facility Product....	Error! Bookmark not defined.
ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION	19
4.1 Billing and Payment.....	19
4.2 Designated Fund/Limited Obligations	21
4.3 Guaranteed Maximum Costs	21
ARTICLE 5: FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE	22
5.1 General Obligations	22
5.2 Facility Construction and Milestones.....	23
5.3 Guaranteed Construction Start Date and Guaranteed Commercial Operation Date ..	24
5.4 Operation and Maintenance.....	26
5.5 Scheduling.....	28
5.6 Dispatch Down/Curtailment of Facility	30
5.7 Forecasts.....	31
5.8 Outages.....	31
ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE	32
6.1 Grant of Security Interests/Remedies.....	32
6.2 Development Assurance and Performance Assurance	33
6.3 Letter of Credit.....	34

ARTICLE 7: FORCE MAJEURE.....	34
7.1 Remedial Action	34
7.2 Notice	34
7.3 Termination Due to Force Majeure Event	34
ARTICLE 8: DEFAULT, REMEDIES, AND TERMINATION	35
8.1 Events of Default	35
8.2 Termination for Default.....	36
8.3 Limitation of Liability/Liquidated Damages	37
ARTICLE 9: INDEMNIFICATION	38
9.1 Seller Indemnification Prior to Commercial Operation Date	38
9.2 Seller and Buyer Indemnification after Commercial Operation Date	38
9.3 Notice	38
ARTICLE 10: REPRESENTATIONS AND WARRANTIES.....	38
10.1 Seller’s Representations and Warranties	38
10.2 Buyer’s Representations and Warranties.....	40
10.3 Covenants	40
ARTICLE 11: MISCELLANEOUS.....	40
11.1 Assignment.....	40
11.2 Proprietary or Confidential Information.....	42
11.3 Dispute Resolution; Choice of Law	43
11.4 Audit.....	43
11.5 General	43
11.6 Mobile Sierra	46
11.7 Forward Contract	47
11.8 Notices.....	47
11.9 Counterparts.....	47

EXHIBITS

The follows Exhibits constitute a part of this Agreement and are incorporated into the Agreement by reference.

EXHIBIT A	SELLER DOCUMENTATION OF CONDITIONS PRECEDENT
EXHIBIT B	FACILITY DESCRIPTION AND SITE DRAWINGS
EXHIBIT C	CONTRACT QUANTITY
EXHIBIT D	INSURANCE COVERAGES
EXHIBIT E	CONSTRUCTION START CERTIFICATION
EXHIBIT F	PROGRESS REPORT
EXHIBIT G-1	COMMERCIAL OPERATION CERTIFICATION
EXHIBIT G-2	CERTIFICATE OF INSTALLED CAPACITY
EXHIBIT H-1	FORM OF LETTER OF CREDIT
EXHIBIT H-2	FORM OF SIGHT DRAFT
EXHIBIT I	FORM OF REPLACEMENT RA

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“Agreement”) is entered into between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) and _____, a _____ (“Seller”), as of _____ (the “Execution Date”). The Agreement shall include the exhibits, attachments, any written and fully executed supplements hereto, and any designated collateral, credit support, or similar arrangement between the Parties.

RECITALS

1. Seller intends to develop, finance, build, own and operate a _____ powered generating facility located in _____; and,
2. Buyer operates CleanPowerSF, a community choice aggregator that serves retail customers in the City and County of San Francisco; and,
3. Buyer is willing to purchase, and Seller is willing to sell, the Product of the Facility, on the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

AC: Alternating current.

Affiliate: With respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

Agreement: Has the meaning set forth in the preamble.

Ancillary Services: Has the meaning set forth in the CAISO Tariff.

Annual Forecast: Has the meaning set forth in Section 5.7(a)(i).

Applicable Laws: Any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including the CAISO, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties or the terms of the Agreement.

Availability Standards: Has the meaning set forth in the CAISO Tariff.

Bankrupt: With respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such case filed against it is not dismissed within sixty (60) calendar days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

Board of Supervisors: The Board of Supervisors for the City and County of San Francisco.

Business Day: Any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or a City and County of San Francisco holiday, between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: The City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF.

Buyer Bid Curtailment: An event in which an Economic Bid or Self-Schedule for Energy or Ancillary Services submitted for a Settlement Interval in accordance with this Agreement results in a Real Time Energy Production Schedule awarded or deployed by the CAISO that fails to provide for the delivery of the full quantity of Energy that could have been delivered as determined by the Final Output Estimate for that Settlement Interval.

Buyer Indemnified Party: Has the meaning set forth in Section 9.1.

Buyer's WREGIS Account: Has the meaning set forth in Section 3.5(c)(i).

CAISO: The California Independent System Operator Corporation, or its functional successor.

CAISO Charges Invoice: Has the meaning set forth in Section 5.5(c).

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, Business Practices Manuals (BPMs), and Operating Procedures as may be amended, supplemented, or replaced (in whole or in part) from time to time.

Capacity Attributes: Any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Facility, intended to value any aspect of the capacity of the Facility to produce energy, including any accounting construct, or any other measure by the CPUC, the CAISO, the FERC, or any other Governmental Authority with jurisdiction, including Resource Adequacy Benefits.

Capacity Procurement Mechanism (CPM) Soft Offer Cap: Has the meaning set forth in the CAISO Tariff.

CEC: The California Energy Commission or any successor agency.

CEC Certification: Means that the CEC has certified, or pre-certified, that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR for purposes of the RPS.

CEQA: The California Environmental Quality Act, California Public Resources Code Sections 21000, et. seq., as it may be amended from time to time.

Change in Law: Has the meaning set forth in Section 11.5(f).

City: The City and County of San Francisco.

CleanPowerSF: Buyer's community choice aggregation program.

Commercial Operation: The condition of the Facility existing when Seller has fulfilled all of the conditions set forth in Section 2.2(b)(ii) and Seller has provided notice to Buyer in the form of the Commercial Operation Certification set forth in Exhibit G-1.

Commercial Operation Certification: Seller's certification of Commercial Operation in the form set forth as Exhibit G-2, duly executed by a Licensed Professional Engineer.

Commercial Operation Date or COD: The date upon which Commercial Operation is achieved as specified in the Commercial Operation Certification.

Commercial Operation Date Delay Damages or COD Delay Damages: An amount equal to the Development Assurance divided by ninety (90).

Compliance Cost Cap: Has the meaning set forth in Section 3.7.

Compliance Costs: Has the meaning set forth in Section 3.7(a).

Confidential Information: Has the meaning set forth in Section 11.2.

Construction Start: Has the meaning set forth in Section 5.3(a)(i).

Construction Start Date: Has the meaning set forth in Exhibit E.

Construction Start Delay Damages: An amount equal to the Development Assurance divided by one hundred twenty (120).

Contract Price: Has the meaning set forth in Section 3.2.

Contract Quantity: The annual expected Energy production set forth in Exhibit C.

Contract Year: A period of twelve (12) consecutive months, commencing at 12:00 a.m. on the COD, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the COD.

Controller: The Controller for the City and County of San Francisco.

Costs: With respect to a Non-Defaulting Party, (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

Cover Sheet: The cover sheet to this Agreement.

CPUC: The California Public Utilities Commission or any successor entity.

CPUC System RA Penalty: The CPUC-adopted penalty imposed on load serving entities for system RA deficiencies as that penalty may be updated or revised from time to time.

Credit Rating: 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 unsecured senior long-term debt, then the rating assigned to such entity as an issuer rating by Standard & Poor's Financial Services and/or Moody's Investors Service. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

Curtailment Order: An order, direction, alert, or notice of the CAISO, Transmission Provider (whether directly or through a Scheduling Coordinator or the Transmission Provider), to curtail deliveries of Energy for any reason, including, but not limited to, any System Emergency, any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Transmission Provider's electric system integrity or the integrity of other systems to which the CAISO or the Transmission Provider is connected, including curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider.

Curtailment Period: The period of time, measured using Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order, including the time required for the Facility to ramp down and ramp up.

Damage Payment: Development Assurance less any Construction Start Delay Damages or Commercial Operation Delay Damages paid and not refunded.

Day-Ahead Market or DAM: Has the meaning set forth in the CAISO Tariff.

Deemed Delivered Energy: Means the amount of Energy expressed in MWh that the Facility could have produced and delivered to the Delivery Point, adjusted for Station Uses and Electrical Losses, but was not produced solely due to a Buyer Bid Curtailment, as adjusted pursuant to Section 5.6(c)(iv). Deemed

Delivered Energy shall be calculated as the difference in MWh between the Final Output Estimate and Delivered Energy.

Defaulting Party: The Party that has caused an Event of Default.

Delivered Energy: Means Energy, net of Electrical Losses and Station Uses, as measured by the Facility Meter.

Delivery Point: _____.

Delivery Term: Has the meaning set forth in Section 2.2(b)(i).

Development Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(a) of this Agreement.

Disadvantaged Community or DAC: Census tracts that either: (1) have a CalEnviroScreen 3.0 or latest version score at or above the 75th percentile, or (2) a census tract that scores in the 95th percentile of the CalEnviroScreen pollution burden, but does not have an overall CalEnviroScreen score due to unreliable health or socioeconomic data.

Early Termination Date: Has the meaning set forth in Section 8.2(a)(i).

Economic Losses: With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner, and subject to Sections 8.2(c)(ii). Factors used in determining the loss of economic benefit may include reference to information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including Environmental Attributes and Capacity Attributes. The Non-Defaulting Party shall not be required to enter into replacement transactions to establish Economic Losses. Economic Losses shall exclude any (1) associated loss of investment tax credits and other lost tax benefits, (2) any costs, penalties, fees, or charges associated with the termination of related financing agreements or similar obligations, and (3) consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

Effective Date: The date on which all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties.

Effective FCDS Date: The date identified in Seller's notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

Electric System Upgrades: Any Network Upgrades, distribution upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Transmission Provider, as applicable, to physically and electrically interconnect the Facility to the Transmission Provider's electric system for receipt of Energy at the Point of Interconnection.

Electrical Losses: All transmission and transformation losses between the Facility and the Delivery Point.

Eligible Intermittent Resources Protocol: Has the meaning set forth in the CAISO Tariff.

Eligible LC Bank: A U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a Credit Rating of at least A3 from Moody's with an outlook designation as "stable", or A- from S&P with an outlook designation as "stable".

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

Energy: Three-phase, 60-cycle alternating current electric energy measured in kilowatt hours or megawatt hours. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Term.

Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to generation from the Facility or Expansion Facility(ies) and its avoided emission of pollutants. Environmental Attributes include, without limitation, Renewable Energy Credits as well as:

- (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Applicable Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and
- (c) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tag are accumulated on a MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of Energy.

Environmental Attributes do not include:

- (i) any Energy, capacity, reliability or other power attributes from the Facility,
- (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by a Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

Environmental Costs: Means all costs, taxes, charges, and fees pertaining to, or incurred in connection with: acquiring and maintaining all environmental permits and licenses for the Facility and the Product; the Product's and Facility's compliance with all applicable environmental laws, rules, and regulations; all costs of permits and licenses; costs associated with the storage, use, disposal, transportation, and clean-up of Hazardous Substances introduced to the Site, and; the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of utility-scale renewable generating projects.

Event of Default: Has the meaning set forth in Section 8.1.

Excess Quantity: Has the meaning set forth in Section 3.2(a).

Execution Date: Has the meaning set forth in the preamble.

Facility: The power generation facility, interconnection facilities, and associated facilities and equipment to be constructed, owned and operated by Seller located on the Site for the generation and delivery of electricity as described in the Cover Sheet and Exhibit B.

Facility Meter: The CAISO-approved, revenue quality meter or meters dedicated solely to the Facility, that meet all applicable CAISO metering requirements, along with a CAISO-approved compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Energy delivered to the Delivery Point. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

FERC: The Federal Energy Regulatory Commission and any successor organization.

Fifteen Minute Market or FMM: Has the meaning set forth in the CAISO Tariff.

Final Output Estimate: The final estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions. The Final Output Estimate shall be equal to the RTM Forecast initially and may be replaced pursuant to Section 5.7(a).

Financial Close: Seller and/or one of its Affiliates has obtained debt and/or equity financial commitments from one or more Lenders or Seller's owners sufficient to construct the Facility.

Fiscal Year: The period commencing on July 1 and ending on June 30 in the following calendar year.

Flexible Capacity: With respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

Flexible RAR: The flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff or the Resource Adequacy Rulings.

Force Majeure Event: An event or circumstance, including without limitation, a natural disaster, war, riot, act of terrorism, sabotage, destruction by a third party, or civil disturbance, which prevents one Party ("Claiming Party") from performing all or a portion of its material obligations under this Agreement, which event or circumstance was not anticipated as of the Execution Date, which is not within the reasonable control of (whether direct or indirect), or the result of the action or inaction of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Neither Party may raise a claim of Force Majeure based in whole or in part on;

- (a) failures or delays by the Transmission Provider and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement, including a failure to complete, or a delay in completing, interconnection or Electric System Upgrades by the Commercial Operation Date except to the extent that such delay is solely caused by a Force Majeure;
- (b) a strike, work stoppage or labor dispute;
- (c) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (d) Seller's inability to obtain Permits of any type, except where such failure is solely caused by a Force Majeure event;
- (e) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure event;
- (f) any equipment failure, except to the extent such inability is caused by a Force Majeure event;
- (g) a Forced Outage except where such Forced Outage is caused by a Force Majeure event;
- (h) a Curtailment Order, to the extent such inability is caused by a Force Majeure event; or

- (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs), including Buyer's ability to buy Product at a lower price, or Seller's ability to sell Product at a higher price.

Forced Labor: Has the meaning set forth in Section 5.1(i).

Forced Outage: Any unplanned reduction or suspension of the operation of the Facility or unavailability of the Product in whole or in part caused by a mechanical, electrical, or equipment malfunction and any other unavailability of the Facility, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

Forward Certificate Transfers: Has the meaning set forth in Section 3.5(c)(i).

Full Capacity Deliverability Status or FCDS: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status or FCDS Finding: A written or electronic confirmation from the CAISO that the Facility is eligible for FCDS.

Gains: With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner, and subject to Sections 8.2(c) and 8.3. Factors used in determining economic benefit may include information either available to the Non-Defaulting Party internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product at the same or reasonably equivalent pNode of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Product, including the value of Environmental Attributes and Capacity Attributes.

GEP Liquidated Damages or GEP LDs: Has the meaning set forth in Section 3.4(a)(i).

GEP Period: Successive periods consisting of two (2) consecutive Contract Years with the first GEP Period commencing on the COD, and with each subsequent GEP Period commencing on the twelve (12) month anniversary of the commencement of the prior GEP Period.

GEP Shortfall: Has the meaning set forth in Section 3.4(a)(i).

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the CAISO.

Guaranteed Commercial Operation Date: Has the meaning set forth on the Cover Sheet.

Guaranteed Construction Start Date: Has the meaning set forth on the Cover Sheet.

Guaranteed Energy Production, or GEP: Has the meaning set forth in Section 3.4(a).

Guaranteed Installed Capacity: Has the meaning set forth on the Cover Sheet.

Hazardous Substance: (a) any chemical, material or substance that is listed or regulated under Applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance for which exposure to or release of such substance is prohibited, limited, or regulated by Applicable Laws.

Indemnified Party: Has the meaning set forth in Section 9.2.

Indemnifying Party: Has the meaning set forth in Section 9.2.

Initial Synchronization: The initial delivery of Energy from the Facility to the Delivery Point.

Installed Capacity: The maximum dependable generating capacity of the Facility that achieves Commercial Operation, as measured by the Facility Meter and adjusted for ambient conditions on the date of the performance test and as set forth in the Installed Capacity Certificate substantially in the form set forth in Exhibit G-2.

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the Transmission Provider, and the CAISO governing the terms and conditions of the Facility's interconnection with the CAISO grid, including any description of the plan for interconnection of the Facility to the Transmission Provider's system.

Interconnection Facilities: The interconnection facilities, control and protective devices and metering facilities required to connect the Facility to the transmission or distribution system as set forth in the Interconnection Agreement.

Investment Grade: Means a Credit Rating of "Baa3" or better from Moody's or "BBB-" or better from S&P.

kW: Kilowatt.

Late Payment Fee: Has the meaning set forth in Section 4.1(b).

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (a) the construction of the Facility, (b) the term or permanent financing of the Facility, or (c) working capital or other ordinary business requirements for the Facility. "Lender(s)" shall not include any trade creditor(s) of Seller.

Letter of Credit or LC: An irrevocable, non-transferable standby letter of credit issued by an Eligible LC Bank in a form that is substantially similar to the form contained in Exhibit H-1. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Licensed Professional Engineer: A third party acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

Local Area Requirements or LAR: The local area reliability requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, by CAISO pursuant to the Tariff, or by other Governmental Authority having jurisdiction. LAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

Locational Marginal Price, or LMP: Has the meaning set forth in the CAISO Tariff.

Master File: Has the meaning set forth in the CAISO Tariff.

Mechanical Completion: The condition of the Facility existing when (i) all components and systems of the Facility have been properly constructed, installed and functionally tested according to Seller's EPC contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Applicable Laws; (ii) the Facility is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC contract.

Milestones: The key development activities required for the construction and operation of the Facility, as set forth more particularly in Section 5.2.

Monthly Forecast: Has the meaning set forth in Section 5.7(a)(ii).

Monthly Payment: Has the meaning set forth in Section 4.1(a)(i).

Moody's: Moody's Investors Service, Inc.

MW: Megawatt.

MWh: Megawatt hour.

Negative LMP: In any Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

NERC: Means the North American Electric Reliability Corporation or a successor organization.

Net Qualifying Capacity or NQC: Has the meaning set forth in the CAISO Tariff.

Network Upgrades: Has the meaning set forth in the CAISO Tariff.

Non-Defaulting Party: Has the meaning set forth in Section 8.2(a).

Notice to Proceed: The full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Facility without any delay or waiting periods.

Outage Schedule: Has the meaning set forth in Section 5.8(a)(i).

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party's respective successors and permitted assignees.

Performance Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 6.2(b) of this Agreement.

Permits: All material federal, state or local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Facility, including any such permits or approvals required under CEQA or the National Environmental Policy Act, 42 U.S.C. Sections 4321 et. seq.

Permitted Extensions: Has the meaning set forth in Section 5.3(c).

Person: An individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Outage: The removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Facility, (b) cannot be reasonably conducted during Facility operations, and (c) causes the generation level of the Facility to be reduced by at least ten percent (10%) of the Installed Capacity.

PNode: Has the meaning set forth in the CAISO Tariff.

Point of Interconnection or POI: The point on the electrical system where the Facility is physically interconnected with the Transmission Provider's system as further described in the Interconnection Agreement.

Product: The Energy, Environmental Attributes, Capacity Attributes, Ancillary Services, and any and all other reliability, power, or environmental attributes which are or can be produced by or associated with the Facility.

Product Content Category 1, or PCC 1 Energy: Means any Renewable Energy Credit and associated generation of electricity from an Eligible Renewable Energy Resource that meets the criteria set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Applicable Laws.

Progress Report: A report containing the information set forth in Exhibit F.

Prudent Operating Practice: Means (a) the applicable practices, methods and acts required by or consistent with Applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities and co-located storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities and co-located storage facilities in the Western United States. Prudent Operating Practice includes compliance with Applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

Public Records Laws: The California Public Records Act, California Government Code Sections 6250 et seq., and the San Francisco Sunshine Ordinance, San Francisco Administrative Code, Chapter 67, the Ralph M. Brown Act, California Government Code Sections 54950, et seq., and any other applicable law regarding public records as may be amended from time to time.

Qualifying Capacity: Has the meaning set forth in the CAISO Tariff.

RA Deficiency Amount: The liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.6(d)(i).

RA Guarantee Date: The date set forth in the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

RA Shortfall: Has the meaning set forth in Section 3.6(d)(i).

RA Shortfall Month: Commencing on the RA Guarantee Date, any month during which (a) the Facility has not achieved FCDS, or (b) the Net Qualifying Capacity of the Facility for such month was either (i) not published by the Notification Deadline, or (ii) was less than the Qualifying Capacity of the Facility for such month.

Real-Time Market or RTM: Has the meaning set forth in the CAISO Tariff.

Reliability Coordinator: Has the meaning set forth in the CAISO Tariff.

Renewable Energy Credit or REC: Has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Applicable Laws.

Renewable Portfolio Standard or RPS: The California Renewable Portfolio Standard as set forth in California Public Utilities Code Sections 399.11 et. seq. and California Public Resources Code Sections 25740, et. seq., as such provisions are amended or supplemented from time to time.

Replacement Price: In dollars per MWh (\$/MWh), Buyer's actual, reasonable and reasonably documented cost of Replacement Product purchased by Buyer pursuant to Section 3.4(a)(i) provided, however, that if Buyer did not purchase Replacement Product during such period, then the Replacement Price shall be calculated as the sum of (1) the price of Energy based on the hourly Day-Ahead Market price at the NP 15 EZ Gen Hub for hours ending 7 through 22 during the applicable period, and (2) the price of Environmental Attributes and Capacity Attributes, if applicable, based on information either available to Buyer internally or supplied by one or more third parties, including quotations (either firm or indicative) for a like amount of a like Product.

Replacement Product: Energy produced from a facility other than the Facility that at the time of delivery to Buyer qualifies as an ERR and which (1) has the same or similar Environmental Attributes, including

PCC 1 Renewable Energy Credits, that would have been generated by the Facility during the Contract Year for which the Replacement Product is provided, and (2) equivalent Capacity Attributes that would have been provided by the Facility during the Contract Year for which the Replacement Product is provided.

Replacement RA: Resource Adequacy provided by Seller to Buyer from a facility other than the Facility which pursuant to Section 3.6(d)(ii) has the same flexible attributes and local, zonal or other locational attributes associated with the Facility.

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

Resource Adequacy Requirements or RAR: the resource adequacy capacity requirements, including LAR and Flexible RAR, for load serving entities established by the Resource Adequacy Rulings.

Resources Adequacy Rulings: The CPUC's existing or subsequent decisions, resolutions, or rulings addressing resource adequacy issues, or any other resource adequacy laws, rules or regulations enacted, adopted, or promulgated by any other Governmental Authority having jurisdiction, including the CAISO, as those decisions, resolutions, rulings, laws, rules, or regulations may be amended or modified from time to time.

RTM Forecast: The final forecast of the Energy to be produced by the Facility prepared by the CAISO or its designee in accordance with the Eligible Intermittent Resources Protocol and communicated to the Scheduling Coordinator for the Facility for use in submitting bids in the Real-Time Market.

Schedule: Has the meaning set forth in the CAISO Tariff.

Scheduled Energy: The Energy economically bid or Self-Scheduled by the SC that clears the applicable CAISO market.

Scheduling Coordinator or SC: Has the meaning set forth in the CAISO Tariff.

Self-Schedule: Has the meaning set forth in the CAISO Tariff.

Seller: Has the meaning in the Preamble, and any successor or permitted assignee.

Seller Day-Ahead Forecast: Has the meaning set forth in Section 5.7(a)(iv).

Seller Excused Product: For any period of time, an amount of Energy expressed in MWh, equal to the Final Output Estimate, that could have been produced but which was not produced as a result of Curtailment Orders, Buyer Bid Curtailment, Force Majeure events, System Emergencies, or forced outages to the transmission or distribution system that prevents delivery of Energy from the Facility from and after the Delivery Point.

Seller's WREGIS Account: Has the meaning set forth in Section 3.5(c)(i).

Settlement Interval: Has the meaning set forth in the CAISO Tariff.

SFPUC: The San Francisco Public Utilities Commission.

Showing Month: The calendar month that is the subject of the RA compliance showing as set forth in the Resource Adequacy Ruling and CAISO Tariff.

Site: The location of the Facility as described on Exhibit B.

Standard & Poor's or S&P: Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global, limited liability company).

Station Use: The Energy used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility.

Surplus Energy: Has the meaning set forth in Section 3.2(b).

System Emergency: Has the meaning set forth in the CAISO Tariff.

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

Term: Has the meaning set forth in Section 2.2(a).

Termination Payment: With respect to the Non-Defaulting Party, the sum of (a) the Economic Losses and Costs, minus the Gains, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, subject to Sections 8.2(c) and 8.3, provided that if such amount is negative, then the amount determined pursuant to this clause (a) of the definition of Termination Payment will be deemed to be zero dollars (\$0), plus (b) the net of all amounts then owed to the Non-Defaulting Party by the Defaulting Party, or to the Defaulting Party by the Non-Defaulting Party, determined as of the Early Termination Date.

Test Energy: Product (to the extent available) including Environmental Attributes generated by the Facility and delivered to the Point of Interconnection prior to the COD.

Transmission Provider: Any entity or entities that owns, operates and maintains transmission or distribution lines and associated facilities used for the purpose of transmitting Energy from the Facility to or from the Delivery Point.

WECC: The Western Electricity Coordinating Council or successor agency.

Weekly Forecast: Has the meaning set forth in Section 5.7(a)(iii).

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking program.

WREGIS Certificate: Has the meaning set forth in the WREGIS Operating Rules and are designated as eligible for compliance with the California RPS.

WREGIS Certificate Deficit: Any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month, after taking into account applicable delays in the issuance of WREGIS Certificates or otherwise arising under WREGIS Operating Rules.

WREGIS Operating Rules: Those operating rules and requirements adopted by WREGIS as of May 2018, as subsequently amended, supplemented, or replaced from time to time.

ARTICLE 2: CONDITIONS PRECEDENT AND TERM

2.1 Conditions Precedent to Term of Agreement

- (a) Conditions Precedent. The Term of this Agreement shall not commence until the occurrence of all of the following:
 - (i) Buyer receives all necessary approvals from the SFPUC and the Board of Supervisors;
 - (ii) Buyer receives from Seller the conditions precedent documentation listed in Part I of Exhibit A; and
 - (iii) Buyer receives from Seller the Development Assurance; and
 - (iv) The Controller has certified in accordance with the City's Charter that sufficient unencumbered balances are available in the proper fund.
- (b) Effective Date. The Effective Date of this Agreement shall be the date that all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing

by both Parties. Buyer will notify Seller promptly in writing when the condition in Section 2.1(a)(i) has been met.

- (c) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Section 2.1(a) are not satisfied or waived in writing by both Parties within ninety (90) days of full execution of this Agreement, then either Party may terminate this Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, as a result of such termination and Buyer shall return all Development Assurance to Seller.

2.2 Term, Delivery Term, and Extension

- (a) Term. The term of this Agreement shall commence, and this Agreement shall be effective, upon the Effective Date and, unless earlier terminated pursuant to an express provision of this Agreement, shall remain in effect until delivery to Buyer of all of the Environmental Attributes associated with Energy delivered under this Agreement subject to Section 11.5(v) (“Term”).
- (b) Delivery Term.
 - (i) The delivery term shall commence on the Commercial Operation Date and continue for _____ years (“Delivery Term”), unless terminated as provided by the terms of this Agreement.
 - (ii) The Delivery Term shall not commence until Seller has completed to Buyer’s reasonable satisfaction each of the following conditions:
 - (A) Seller has delivered to Buyer the Commercial Operation Certification in substantially the form set forth at Exhibit G-1 and the Installed Capacity Certification in substantially the form set forth at Exhibit G-2;
 - (B) equipment for the Facility with a capacity of no less than ninety-five percent (95%) and no more than one hundred percent (100%) of the Guaranteed Installed Capacity has been installed;
 - (C) Seller has obtained the precertification approval component of the CEC Certification requirement for the Facility;
 - (D) The Facility has successfully completed all testing required by Prudent Operating Practice and any applicable requirement to operate the Facility;
 - (E) Seller has secured and maintained in full force and effect all necessary approvals, authorizations, and permits from CAISO and any other Governmental Authority with jurisdiction to enable Seller to operate the Facility and deliver Product to Buyer and all conditions thereof that are capable of being satisfied on the COD have been satisfied and are in full force and effect;
 - (F) Seller has delivered to Buyer a fully executed Interconnection Agreement between Seller and the Transmission Provider for the Facility, which agreement shall be in full force and effect;
 - (G) Seller has delivered to Buyer a fully executed Participating Generator Agreement and Meter Services Agreement between Seller and the CAISO for the Facility, which agreements shall be in full force and effect;
 - (H) Seller has taken all necessary steps to allow the RECs from the Facility to be tracked in WREGIS and transferred to Buyer and all other requirements applicable to Seller to enable Buyer to use such RECs for its RPS requirements;

- (I) Seller has taken all actions and executed all documents required to authorize Buyer or its designee to act as Scheduling Coordinator for the Facility and Buyer or its designee is authorized to act as SC;
 - (J) Seller has demonstrated satisfaction of all requirements under this Agreement that commence prior to or as of the Delivery Term, including payment of all amounts owed to Buyer under this Agreement, if any; and
 - (K) Seller has delivered Performance Assurance to Buyer.
- (c) The Parties agree that, in order for Buyer to dispatch the Facility as of the Commercial Operation Date, the Parties must perform certain of their Delivery Term obligations in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility as of the Commercial Operation Date.

ARTICLE 3: PURCHASE AND SALE OF PRODUCT

3.1 Purchase and Sale. During the Delivery Term, subject to the terms and conditions of this Agreement, Buyer will purchase all of the Product produced by or associated with the Facility and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility.

- (a) Exclusive Right. Buyer shall have the exclusive right to all Product associated with the Facility. Buyer shall have the exclusive right to use, market, or resell the Product and the right to all revenues generated from the use, resale, or remarketing of the Product. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to facilitate a resale of Product by Buyer and to allow subsequent purchasers to use such resold Product.
- (b) No Substitution. Except as otherwise set forth in this Agreement, Seller shall not substitute or purchase any element of the Product from sources other than the Facility or sell Product from the Facility to a third party.
- (c) Title to Product. Commencing on the Commercial Operation Date through the end of the Delivery Term, Seller shall supply and deliver Energy to Buyer at the Delivery Point, and Buyer shall take delivery of and title to the Energy at the Delivery Point in accordance with the terms of this Agreement. Title to and risk of loss as to Environmental Attributes shall pass from Seller to Buyer upon transfer of such Environmental Attributes in WREGIS. Seller represents and warrants that it shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest created by any Person other than Buyer. Subject to Section 5.5(b), Seller shall be responsible for any costs, fees, Taxes, assessments, or charges imposed on or associated with the Product or the delivery of the Product up to the Delivery Point and Buyer shall be responsible for any costs, fees, Taxes, assessments, or charges imposed on or associated with the Product or the delivery of the Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

3.2 Contract Price. Buyer shall pay Seller _____ dollars per MWh (\$ /MWh) for Product delivered pursuant to this Agreement and Deemed Delivered Energy as adjusted pursuant to Section 3.2 ("Contract Price"). The Contract Price shall be the total compensation owed by Buyer for the Product, adjusted as follows:

- (a) Excess Quantity. Buyer has the right, but not the obligation, to purchase any Product in excess of one hundred and fifteen percent (115%) of the Contract Quantity for the then-current Contract Year ("Excess Quantity"). Buyer shall pay Seller the lesser of fifty

percent (50%) of the Contract Price or the LMP, but not less than zero dollars per MWh, for Excess Quantity. In each Contract Year, if the Facility achieves ninety percent (90%) of the Contract Quantity, Seller shall (i) provide notice to Buyer, and (ii) request written confirmation from Buyer that Buyer intends to purchase any Excess Quantity. If Buyer does not respond within ten (10) Business Days, Seller shall have the right to sell any Excess Quantity that Buyer does not elect to purchase to a third party; provided that if Buyer is SC and does not elect to purchase the Excess Quantity, the Parties shall cooperate on settlements such that Buyer passes through to Seller any applicable CAISO costs and revenues.

- (b) Surplus Energy Price. If during any Settlement Interval, Seller delivers Product amounts in excess of the quantity of Energy that would be delivered consistent with the power rating of the Installed Capacity (“Surplus Energy”), then the price applicable to all such MWh or Surplus Energy shall be zero dollars (\$0). If the real-time LMP at the Delivery Point during any Settlement Interval is less than zero dollars (\$0), Seller shall pay to Buyer an amount equal to the absolute value of the LMP multiplied by the amount of Surplus Energy in MWh.

3.3 Contract Quantity.

- (a) Contract Quantity. The Contract Quantity is set forth in Exhibit C.
- (b) Test Energy. Buyer may elect to purchase Test Energy for a period of up to ninety (90) days prior to the Commercial Operation Date and up to the commencement of the Delivery Term pursuant to the terms of this Agreement, provided that the decision to produce and deliver Test Energy shall be at the sole discretion of Seller. Buyer shall provide notice to Seller of its election at least sixty (60) days prior to the start of Facility testing. If Buyer does not elect to purchase Test Energy, Seller may sell the Test Energy and associated Environmental Attributes to a third party and Buyer shall facilitate interactions with CAISO regarding Test Energy as necessary in accordance with Seller’s directions. If Buyer elects to purchase Test Energy, Seller’s full compensation for Test Energy sold to Buyer shall be the net amount resulting from (i) the CAISO revenues and other payments for the Test Energy from the Facility, including revenues associated with CAISO dispatches, and (ii) the debits, costs, penalties and interest that are directly assigned by the CAISO to the Facility for, or attributable to, scheduling and deliveries of Test Energy from the Facility under this Agreement, which amount may be a negative or positive value.

3.4 Guaranteed Energy Production. For each GEP Period throughout the Term, Seller shall deliver no less than eighty (80%) of (i) the sum of the Contract Quantities for the GEP Period, minus (ii) the Seller Excused Product (“Guaranteed Energy Production” or “GEP”).

- (a) GEP Shortfall. If Seller fails to meet the GEP, then within sixty (60) days after the end of the relevant GEP Period, Buyer shall notify Seller of the quantity of the shortfall calculated for the relevant GEP Period as: eighty percent (80%) of (A) the sum of the Contract Quantities for the GEP Period minus (B) the sum of (1) Delivered Energy quantities, plus (2) Seller Excused Product, plus (3) the MWh equivalent of any Replacement Product or Minimum Deliveries Liquidated Damages that Seller provided to Buyer for any Three-Month Shortfalls within the GEP Period (“GEP Shortfall”) and the amount of liquidated damages owned under this Section 3.4(a). Within ten (10) Business Days after the receipt of notice of the GEP Shortfall, Seller shall either (C) offer to provide Replacement Product in accordance with the procedures set forth in Section 3.4(e) in the amount of the GEP Shortfall, or (D) pay Buyer liquidated damages calculated as: the positive difference obtained by subtracting the (i) Contract Price from (ii) the Replacement Price; multiplied by the GEP Shortfall (“GEP LDs”). Buyer shall not be obligated to purchase Replacement Product.

- (b) Payment. If within ten (10) Business Days of receipt of notice of a GEP Shortfall, Seller does not either provide an offer to Buyer to provide Replacement Product or deliver payment of the GEP LD amount to Buyer, Buyer shall be entitled to collect the GEP LDs by electing, in its sole discretion, one or more of the following, (1) to draw upon the Performance Assurance; and/or (2) netting under Section 4.1(c).
- (c) As set forth in Section 8.1(b)(iii), Seller's failure to deliver in any two (2) consecutive Contract Years at least seventy percent (70%) of the sum of the expected Contract Quantities for the relevant Contract Years, excluding Seller Excused Hours, shall constitute a default of this Agreement.
- (d) No less frequently than quarterly during each year, Seller shall calculate and provide notice to Buyer of the then-cumulative amount of the Seller Excused Product for such year, along with an explanation in reasonable detail of the calculation based on historical Facility data, meteorological data, Product projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to Buyer's reasonable review and approval.
- (e) Replacement Product and Cure.
 - (i) If Seller provides an offer to Buyer to provide Replacement Product pursuant to Sections 3.4(a), then Buyer shall have fifteen (15) days after receipt of Seller's notice to confirm whether it will accept Replacement Product from Seller. If Buyer agrees to accept the Replacement Product, the Parties shall mutually agree upon a delivery schedule. All Replacement Product shall be delivered to Buyer at the NP 15 EZ Gen Hub. Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 3.4(e) at the Contract Price. If Buyer rejects the offer of Replacement Product, Seller shall pay the GEP LDs to Buyer.
 - (ii) Buyer's receipt of Replacement Product or GEP Liquidated Damages shall cure the performance issue that triggered such remedy as follows:
 - (A) The MWhs of Replacement Product delivered and the MWhs used in the calculation of GEP LDs or Minimum Deliveries LDs which were paid to Buyer pursuant to Section 3.4(a) shall be treated as actual deliveries in the most recent month in which the applicable shortfall occurred when assessing Seller's compliance with its obligations under this Agreement including delivery obligations under Section 3.4(a).
 - (B) The quantities of Energy for which Seller paid GEP LDs or delivered Replacement Product in the second Contract Year of a GEP Period shall be included in the calculation of the GEP Shortfall for the first Contract Year of the following GEP Period.

3.5 Environmental Attributes.

- (a) Purchase and Sale of Environmental Attributes. During the Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title and interest in and to the Environmental Attributes associated with Delivered Energy, whether now existing or subsequently created by a Governmental Authority after the Execution Date. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to transfer all rights, title, and interest in and to the Environmental Attributes, whether now existing or that come into existence in the future, associated with the Delivered Energy. Seller shall transfer and make such Environmental Attributes available to Buyer as soon as practicable upon Seller's production of the Environmental Attributes.
- (b) Buyer's Right to Report Ownership of Environmental Attributes. Seller shall not report to any Person or entity that the Environmental Attributes belong to anyone other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

- (c) Renewable Energy Credits. Seller shall, at its sole expense take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the applicable requirements of the California RPS and transferred within three (3) months of creation to Buyer for Buyer's sole benefit. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:
- (i) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or another account identified by Buyer ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.
 - (ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Any fractional MWh amounts shall be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
 - (iii) Due to the delay in the creation of WREGIS Certificates relative to the timing of the monthly invoice payment under this Agreement, Buyer may make an invoice payment for a given month before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.5(c). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller.
 - (iv) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in such calendar Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 4 and the Guaranteed Energy Production for the applicable GEP Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 4, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller.
 - (v) Without limiting Seller's obligations, to the extent a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
 - (vi) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Agreement, the Parties shall promptly modify this Agreement as reasonably required (A) to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month, or (B) as may otherwise be reasonably appropriate to address such inconsistency.

3.6 Capacity Attributes and Resource Adequacy. Throughout the Delivery Term, Seller grants, pledges, assigns, and otherwise commits to Buyer all of the Installed Capacity, including the Capacity Attributes, from the Facility for any purpose, including to enable Buyer to meet its Resource Adequacy Requirements or successor program requirements as the CPUC, CAISO, and/or other Governmental Authority may prescribe.

- (a) Full Capacity Deliverability Status. **[IF APPLICABLE]** Seller shall be solely responsible for and take all necessary actions to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date and to maintain FCDS throughout the Delivery Term.
- (b) Resource Adequacy. From the Execution Date and throughout the Delivery Term, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits from the Facility to Buyer. Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments necessary to enable Buyer to use or resell all of the Resource Adequacy Benefits committed to Buyer under this Agreement.
- (c) NQC. Seller shall take all commercially reasonable actions as necessary for Buyer to obtain and maintain an NQC value that is equal to the Qualifying Capacity for the Facility.
- (d) Resource Adequacy Guarantee. **[IF APPLICABLE]** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.
 - (i) For any RA Shortfall Month, Seller shall pay liquidated damages to Buyer in an amount equal to the product of (A) the Qualifying Capacity minus the NQC, as the NQC may be adjusted by the CAISO to reflect the CAISO's capacity evaluations of the Facility (including for Forced Outages) for the RA Shortfall Month ("RA Shortfall"), multiplied by (B) the sum of (1) the CPM Soft Offer Cap, or any successor value adopted or implemented by the CAISO for procurement of backstop capacity resources and (2) the applicable CPUC System RA Penalty, or any successor value adopted or implemented by the CPUC and imposed on load-serving entities for RA deficiencies ("RA Deficiency Amount"). If a RA Shortfall Month occurs during the period between the COD and the Effective FCDS Date, for the purpose of this Section 3.6(d)(i), the Qualifying Capacity shall be the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect, provided, the amount shall be deemed to be zero (0) if the NQC has not been published by the CAISO by the Notification Deadline for the RA Shortfall Month.
 - (ii) Seller may offer to provide Replacement RA to Buyer in the amount of the Qualifying Capacity of the Facility minus the Net Qualifying Capacity for the applicable RA Shortfall Month. Seller shall provide notice to Buyer of the offer of Replacement RA substantially in the form of Exhibit I at least ninety (90) days prior to the applicable Showing Month for the purpose of monthly RAR reporting. Buyer may elect to accept some or all of the Replacement RA by providing notice to Seller of its election within fifteen (15) days of Seller's offer. If Buyer rejects the offer of Replacement RA, Seller shall pay to Buyer the RA Deficiency Amount for the RA Shortfall for the RA Shortfall Month.
 - (iii) If within ten (10) Business Days of the end of a RA Shortfall Month, Seller does not either provide an offer to Buyer to provide Replacement RA or deliver payment of the RA Deficiency Amount to Buyer, Buyer shall be entitled to collect the RA Deficiency Amount by electing, in its sole discretion, one or more of the following,

(A) to draw upon the Performance Assurance; and/or (A) netting under Section 4.1(c).

3.7 Compliance Cost Cap. If Seller establishes to Buyer's reasonable satisfaction that a change in Applicable Law has occurred after the Effective Date that results in Compliance Costs as defined in Section 3.7(a), then Seller's Compliance Costs during the Delivery Term shall be capped in the aggregate throughout the Delivery Term at twenty-five thousand dollars (\$25,000.00) per MW of Installed Capacity ("Compliance Cost Cap").

- (a) Compliance Costs. This Section shall apply to Seller's additional, reasonable out-of-pocket costs paid to applicable Governmental Authorities for obtaining, maintaining, conveying, or complying with: (i) CEC Certification, (ii) Environmental Attributes including WREGIS certificates, (iii) Capacity Attributes, and (iv) Sections 10.1(g) through 10.1(j) ("Compliance Costs"). Compliance Costs includes only those new costs associated with the change in Applicable Law after the Execution Date that are in excess of the reasonably anticipated compliance costs as of the Execution Date.
- (b) Reimbursement. In the event that the Compliance Costs exceed the Compliance Cost Cap, Buyer shall either reimburse Seller for such Compliance Costs that exceed the Compliance Cost Cap, or excuse Seller from performing those obligations that cause the Compliance Costs to exceed the Compliance Cost Cap. If Buyer agrees to reimburse Seller, Seller shall perform the additional compliance actions and shall include the Compliance Costs in the monthly invoice.
- (c) Notice. Seller shall notify Buyer within sixty (60) calendar days after the change in Applicable Law if it anticipates that its Compliance Costs will exceed the Compliance Cost Cap and provide an estimate of the Compliance Costs. Buyer shall notify Seller within ninety (90) calendar days of receipt of the notice whether Buyer (i) agrees to reimburse Seller for the additional costs, or (ii) waives Seller's performance of such obligations.

3.8 Tax Credits and Incentives. Buyer acknowledges and agrees that all federal, state, or local tax credits, deductions, subsidies, and incentives related to the construction, ownership, or production of electricity from the Facility shall be owned by Seller, including tax credits available under Sections 38, 45, 46, and 48 of the Internal Revenue Code of 1986 as amended or any successor law. Notwithstanding the foregoing, Seller's rights under this section shall not include anything that qualifies as Product (including any Environmental Attributes).

ARTICLE 4:

BILLING, PAYMENT, AND CERTIFICATION

4.1 Billing and Payment.

- (a) Monthly Invoices. Seller shall provide to Buyer no sooner than the tenth (10th) calendar day of each month an invoice for the Product and Deemed Delivered Energy for the prior month based upon meter data for Energy delivered in such calendar month, and for other amounts due to or from Seller hereunder. Each invoice shall be in a form reasonably specified by Buyer and shall include sufficient data as is reasonably necessary to verify each element of the calculation of the Monthly Payment and other charges and credits as set forth in this Agreement. Except for Deemed Delivered Energy and Replacement Product, all Energy purchased under this Agreement must be measured by the Facility's CAISO revenue meter to be eligible for payment under this Agreement.
 - (i) The "Monthly Payment" for each month will be an amount equal to the summation of the following for each Settlement Interval in such month:
 - (A) the product of (1) the Delivered Energy for such Settlement Interval, multiplied by (2) the Contract Price, plus

- (B) the product of (1) the Deemed Delivered Energy for such Settlement Interval, multiplied by (2) the Contract Price, plus
 - (C) credits for any amounts owed from Seller to Buyer under Section 5.6(b); plus
 - (D) any other amounts netted against the monthly invoice pursuant to Section 4.1(c).
- (ii) The Invoice shall include:
- (A) the hourly quantities of Delivered Energy delivered in the prior month;
 - (B) a calculation of the Monthly Payment as set forth in Section 4.1(a)(i);
 - (C) credits for WREGIS Certificate Deficits pursuant to Section 3.5(c)(iv), if any;
 - (D) the quantity of Replacement Product provided by Seller in such month;
 - (E) a calculation of the Deemed Delivered Energy for such month; and
 - (F) the calculation of any other amounts due to or from Seller hereunder.
- (iii) Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.
- (b) Payment. Unless otherwise specified under this Agreement, all payments shall be due and payable on or before the thirtieth (30th) calendar day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Any amount not paid when due shall be considered late and the Party owing the payment shall pay a Late Payment Fee equal to a daily rate of five dollars and fifty cents (\$5.50) per one hundred thousand dollars (\$100,000) on the unpaid balance for a maximum period of ninety (90) days after the due date of the payment (“Late Payment Fee”) shall be added to the outstanding amount.
- (c) Netting. Except as otherwise set forth in this Agreement, the Parties shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting. All amounts owed by each Party to the other Party under this Agreement, including for the purchase and sale of Product during the monthly billing period, any damages set forth under this Agreement, CAISO Charges Invoices, Late Payment Fees, and payments or credits, shall be netted so that only the excess amount remaining shall be paid by the Party who owes it.
- (d) City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Fee shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller’s failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City’s vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.
- (e) Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion

thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with the Late Payment Fee from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Buyer from subsequent payments. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.1(d) within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which delivery of Product occurred, the right to payment for such delivery is waived.

- (f) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data or applicable market prices for a given time period, the Parties shall share information necessary to revise the monthly invoices pursuant to Section 4.1 and Seller agrees that it shall submit revised monthly invoices covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the Seller receives such binding adjustment to the meter data.

4.2 Designated Fund/Limited Obligations.

- (a) Auto-Appropriating Designated Fund. Buyer's payment obligations under this Agreement shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further Buyer action and which shall be used solely for CleanPowerSF costs and expenses, including the obligations under this Agreement. Buyer agrees to establish CleanPowerSF rates and charges that are sufficient to maintain revenues necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the SFPUC designated fund upon request during the Delivery Term.
- (b) Limited Obligations. Buyer's payment obligations are special limited obligations of the Buyer payable solely from the revenues of CleanPowerSF. Buyer's payment obligations under this Agreement are not a charge upon the revenues or general fund of the SFPUC or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.

4.3 Guaranteed Maximum Costs.

- (a) Controller Certification. The Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Agreement scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

- (b) Biennial Budget Process. For each City biennial budget cycle during the term of this Agreement, Buyer agrees to take all necessary action to include the Buyer's payment obligations under this Agreement in its budget submitted to the Board of Supervisors for that budget cycle.

ARTICLE 5:

FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE

5.1 General Obligations. Seller covenants that at its sole cost and expense, unless otherwise specifically stated in this Agreement, it shall:

- (a) Records. Seller shall keep complete and accurate design, operating, and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority or Prudent Operating Practice;
- (b) Further Development Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction, or operations of the Facility as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to obtain such information upon agreeing to confidentiality or signing a confidentiality agreement with regard to such information;
- (c) Insurance. Seller shall obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit D;
- (d) Vendor Certification. Seller shall obtain, renew, and maintain, all City required vendor certifications and requirements during the Term of this Agreement;
- (e) Construction. Design, develop, finance, and construct the Facility;
- (f) Prevailing Wages. Pay any person performing labor in the construction of the Facility not less than the applicable prevailing wage rate for the county in which the Facility will be located, as determined by the California Department of Industrial Relations. Seller shall require in any contract related to the construction of the Facility the payment of the prevailing wage rate for the work to be performed. Seller shall provide to Buyer upon request, certified payroll reports with respect to all persons performing labor in the construction of the Facility;
- (g) Local Workforce Development. Maximize participation of local workers (including workers from any DAC located within the City, the southeast sector of the City, or the DAC where the Facility is located) in the development and construction of the Facility. Prior to the Guaranteed Construction Start Date, Seller shall provide a local workforce development plan to Buyer for Buyer's review and approval
- (h) Forced Labor. Not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("Forced Labor"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.
- (i) Interconnection and Transmission. Take all necessary actions, including arranging and paying for any and all necessary Electric System Upgrades, obtaining all required regulatory approvals, and executing and maintaining in full force and effect all necessary agreements sufficient to allow Seller to interconnect the Facility to the CAISO grid or distribution system, and deliver the Product to the Delivery Point by the Commercial

Operation Date in accordance with this Agreement. Seller shall comply with all applicable requirements, rules, contractual obligations, and Prudent Operating Practice to maintain any Interconnection Facilities and to cause delivery of the Product to Buyer;

- (j) **RPS and Green-e® Certification.** Prior to the Commercial Operation Date and throughout the Delivery Term, take all actions necessary to obtain and maintain for the Facility (A) CEC Certification, (B) tracking and transfer of RECs associated with the Product in WREGIS, and (C) Green-e® Energy eligibility for renewable energy and greenhouse gas emissions as administered by the Center for Resource Solutions;
- (k) **Battery Storage.** At the request of Buyer at any time during the Term, Seller shall in good faith evaluate and consider proposals for adding a battery storage unit(s) to the Facility, provided that Seller shall not be required to add any such storage unit(s) to the Facility unless and until Seller, Buyer and any Lenders each (in their sole and absolute discretion) approves the technical details of such unit(s) and appropriate amendments to this Agreement related to such unit(s), including additional compensation related to such unit(s). Seller shall use commercially reasonable efforts to reserve land at the project substation and/or project site for the inclusion of up to _____ MWh of storage;
- (l) **CEC Certification.** Take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the RPS Eligibility Guidebook (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification. Seller shall take all necessary action to cause the creation of retroactive WREGIS Certificates for the period prior to the final CEC Certification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification for the Facility;
- (m) **Environmental Costs.** Be solely responsible for all Environmental Costs; and
- (n) **Compliance with Laws.** Seek, obtain, maintain, and comply with all Applicable Laws, Permits, certificates, agreements, or other authorizations or approvals which are required for the ownership, construction, operation, and maintenance of the Facility and the generation, delivery, and sale of the Product pursuant to this Agreement.

5.2 Facility Construction and Milestones.

- (a) **Time is of the Essence.** The Parties agree that time is of the essence in the performance of this Agreement. Seller covenants that it shall diligently pursue to completion each of the following Milestones:
 - (i) Site control: [_____];
 - (ii) Final and non-appealable discretionary authorizations, Permits, and approvals: [_____];
 - (iii) Phase I and II Interconnection study results: [_____];
 - (iv) Executed Interconnection Agreement: [_____];
 - (v) Financial Close: [_____];
 - (vi) Construction Start: [_____] (“Guaranteed Construction Start Date”);
 - (vii) Mechanical Completion: [];
 - (viii) Initial Synchronization: [_____];

- (ix) Network Upgrades completed (evidenced by a permission to parallel letter from the Transmission Provider): [_____]; and,
 - (x) Commercial Operation: [_____] (“Guaranteed Commercial Operation Date”).
- (b) Progress Report. Seller shall provide to Buyer a Progress Report concerning the progress towards construction and completion of the each of the Milestones (including whether Seller has met or is on target to meet each of the Milestones), which shall be substantially similar in form and substance to that attached as Exhibit F, and include such additional information as reasonably required by Buyer. Commencing on the Effective Date, Seller shall provide Progress Reports every three (3) months prior to the Guaranteed Construction Start Date and monthly Progress Reports thereafter. Seller agrees to meetings between representatives of Buyer and Seller to review such Progress Reports and discuss Seller’s construction progress, as Buyer may request from time to time.
- (c) Certification of Completion of Milestones. Within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to Buyer (along with any relevant supporting documentation), stating Seller’s achievement or satisfaction of each such Milestone.
- (d) Notice of Failure to Achieve Milestone. Upon becoming aware that it shall, or is reasonably likely to, fail to achieve any Milestone by the required date for any reason, Seller shall notify Buyer in writing as soon as is reasonably practical but no later than thirty (30) days prior to the Milestone date. If the delay is caused by a Force Majeure event and thirty (30) days’ notice is not feasible, Seller shall notify Buyer in writing as soon as reasonably practical. The notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Milestone(s), and describe Seller’s plan for meeting the Milestone(s) in sufficient detail to enable Buyer to reasonably assess the sufficiency of the plan to remedy the delay and achieve the Milestone. Seller’s notice shall also explain any impact such delay may or shall have on any other Milestone, and measures to be taken to mitigate such impact. Subject to the provisions of Section 5.3, Seller shall not be considered in default of this Agreement for failure to meet a Milestone if Seller complies with its obligations under this Section 5.2(d).

5.3 Guaranteed Construction Start Date and Guaranteed Commercial Operation Date.

- (a) Construction Start.
- (i) “Construction Start” will occur when Seller has (i) obtained all necessary approvals, Permits, and authorizations for the construction of the Facility, (ii) executed an EPC contract and engaged all necessary contractors, (iii) ordered all essential equipment and supplies that are necessary to commence physical construction of the Facility and to proceed to completion without a foreseeable interruption of material duration, (iv) issued a final Notice to Proceed to the EPC Contractor, and (v) commenced mobilization at the Site by Seller or its agents, including site preparation at a sufficient level to reasonably demonstrate that Seller has commenced preparations for construction of the Facility, and (vi) delivered to Buyer the Construction Start Certification substantially in the form set forth in Exhibit E. Seller shall cause the Construction Start to occur no later than the Guaranteed Construction Start Date.
 - (ii) Seller may extend the Guaranteed Construction Start Date by paying Construction Start Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days. At least ten (10) Business Days prior to the Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Start Delay Damages for the number of days of extension to the Guaranteed Construction Start

Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Date Damages, but as may be extended pursuant to a Permitted Extension), Buyer shall refund to Seller all Construction Start Delay Damages.

- (b) Commercial Operation.
- (i) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date.
 - (ii) Seller may extend the Guaranteed Commercial Operation Date by paying COD Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of ninety (90) days. At least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the COD Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions resulting from Seller's payment of COD Delay Damages, but as may be extended pursuant to a Permitted Extension), then Buyer shall refund to Seller all COD Delay Damages.
- (c) Permitted Extensions. The following events constitute "Permitted Extensions":
- (i) A Force Majeure event occurs and Seller works diligently to resolve the effect of the Force Majeure event;
 - (ii) Seller has used commercially reasonable efforts to obtain Facility interconnection but the Electric System Upgrades are not complete and ready for the Facility to connect and deliver and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date; or
 - (iii) Buyer has not made all necessary arrangements to receive Energy from the Facility at the Delivery Point by the Guaranteed Commercial Operation Date.
- (d) Notice. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' notice prior to the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date which notice shall clearly identify the grounds for the requested extensions and include information necessary for Buyer to verify the length of and grounds for the extension. If the delay is due to Force Majeure and sixty (60) days' notice is impracticable or impossible, Seller shall provide notice as soon as possible after the occurrence of the Force Majeure event.
- (e) Maximum Delay.
- (i) The combined Permitted Extensions under this Section 5.3 (other than the extensions under Section 5.3(c)(iii)) for the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date combined shall not exceed one hundred twenty (120) days in the aggregate.
 - (ii) The cumulative extensions of the Guaranteed Commercial Operation Date for Permitted Extensions (other than the extensions under Section 5.3(c)(iii)) and by payment of Commercial Operation Delay Damages shall not exceed two hundred and ten (210) days.
- (f) No Limitation of Damages. The Parties agree that Buyer's receipt of the Construction Start Delay Damages or COD Delay Damages shall (i) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article 8, and (ii) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's termination rights pursuant to Section 5.3(h) or Article 8.

- (g) Development Assurance. If Seller fails to timely pay any Construction Start Delay Damages or COD Delay Damages, Buyer may draw upon the Development Assurance to satisfy Seller's payment obligations under this Section 5.3.
- (h) Termination of Agreement. Buyer may terminate this Agreement by written notice to Seller if:
 - (i) Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date and the combined extensions to the Guaranteed Construction Start Date exceed the limits under Sections 5.3(a)(ii) and 5.3(e); or
 - (ii) Seller fails to achieve COD on or before the Guaranteed COD Date and the combined extensions to the Guaranteed COD Date exceed the limits under Sections 5.3(b)(ii) and 5.3(e); or
 - (iii) Seller fails to pay, or discontinues paying, any or all of the Construction Delay Damages or COD Delay Damages when due and Buyer cannot obtain such amounts by drawing upon the Development Assurance and/or setting off against any amounts owed to Seller by Buyer under this Agreement.
- (i) Additional Extension. Notwithstanding the foregoing, the Parties may mutually agree in writing to an extension of the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date of up to ninety (90) days beyond the maximum extensions set forth under Sections 5.3(e) with payment of the Construction Start Delay Damages or COD Delay Damages, as applicable, by Seller. Buyer may not terminate this Agreement for failure to achieve the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date during the mutually agreed upon extension period so long as Seller continues to pay the Construction Start Delay Damages or COD Delay Damages.

5.4 Operation and Maintenance.

- (a) Operation and Maintenance. Seller shall be solely responsible for the ownership, operation, maintenance, and repair of the Facility in compliance with this Agreement, all Applicable Laws, the requirements of the California general safety orders, CAISO, NERC and WECC, all applicable contractual obligations and Permits, and in accordance with Prudent Operating Practice, and shall be solely responsible for all associated costs and expenses. In the event Seller requires any data or information from Buyer in order to comply with any Applicable Law, including the requirements of CAISO, NERC and WECC, relating to the Facility, then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.
- (b) Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in the Cover Sheet notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to the Delivery Point.
- (c) Start-ups and Shut-downs. Seller shall coordinate all Facility start-ups and shut-downs, in whole or in part, with Buyer in accordance with CAISO scheduling protocols and the

reasonable protocols established by Buyer that are not inconsistent with the CAISO Tariff and CAISO procedures.

(d) Metering.

(i) All Energy from the Facility must be delivered through the Facility Meter, which shall be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Uses. Each meter shall be kept under seal which may be broken only when the Facility Meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable.

(ii) The meter data will account for transformer losses and will be programmed to reflect Electrical Losses to the Delivery Point, consistent with CAISO requirements. Seller shall bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant Buyer (and Buyer's Scheduling Coordinator) read-only rights to retrieve all data, including the meter reads, directly from the CAISO meter(s) at the Facility site through both (A) physical access and (B) remote electronic read-only access as necessary for the Scheduling Coordinator to meet its obligations under the CAISO Tariff and other applicable rules. Seller shall maintain an updated record of programmed meter parameters (such as channel configuration and other relevant settings) that is accessible and reasonably acceptable to Buyer. In addition, Seller shall provide all meter data to Buyer in a form reasonably acceptable to Buyer and consents to Buyer obtaining from CAISO the CAISO meter data directly related to the Facility and all inspection, testing, and calibration data and reports.

(iii) If Seller has reason to believe there may be a Facility Meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility Meter(s) at its sole cost and expense. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, Seller shall promptly repair or replace the meter at its sole cost and submit corrected meter data in compliance with CAISO requirements. Seller shall be responsible for and shall reimburse Buyer for all CAISO costs, penalties, and charges related to the inaccuracy of the Facility Meter.

(iv) Upon Buyer's request, Seller shall take all commercially reasonable actions to become, as specified by Buyer, either a CAISO Metered Entity or a Scheduling Coordinator Metered Entity (as those terms are defined in the CAISO Tariff).

(e) Shared Facilities. The Parties acknowledged and agree that the Facility may share the Interconnection Facilities and other assets, including the Interconnection Agreement and transmission service agreements. Seller agrees that such joint ownership or arrangements shall permit Seller to perform or satisfy, and shall not limit, Seller's obligations under this Agreement and providing for separate metering of the Facility.

(f) Refurbishment of the Facility. During the Term, Seller may not refurbish the Facility, alter components of the Facility, or replace major components of the Facility where such action results in a total increased capacity higher than the Guaranteed Installed Capacity, without the prior written consent of Buyer. Buyer shall have the right, in its sole discretion, to accept or decline to permit any such refurbishment or alteration that may increase capacity of the Facility above the Guaranteed Installed Capacity. Nothing in this Section 5.4 is intended to limit Seller's ability to refurbish, repair, maintain, or replace any portion of the Facility where such actions will not increase the Facility's total generating capacity above the Guaranteed Installed Capacity.

5.5 Scheduling.

(a) Scheduling Coordinator.

- (i) Upon Initial Synchronization, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to Initial Synchronization, (A) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or Buyer's designee as Scheduling Coordinator for the Facility effective as of the date of Initial Synchronization and (B) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization. On and after Initial Synchronization, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer or its designee shall submit Schedules and updates to Schedules consistent with the requirements of the CAISO Tariff and CAISO protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute, or real time basis, as determined by Buyer in its sole discretion.
- (ii) At any time during the Term of this Agreement, Buyer may elect to require Seller or Seller's designee to become the Scheduling Coordinator for the Facility. Buyer shall provide one hundred twenty (120) days prior notice to Seller and the Parties shall promptly enter into good faith negotiations on necessary amendments to this agreement to reflect the transfer of Scheduling Coordinator responsibilities to Seller. The negotiations shall be limited to necessary amendments that are solely related to the Scheduling Coordinator services for the Facility.
- (iii) Buyer shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically and by electronic mail to the personnel designated to receive such information.
- (iv) At least thirty (30) days prior to the expiration of the Delivery Term or the date that Seller assumes SC services under Section 5.5(a)(ii), or as soon as reasonably practicable upon an early termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on the designated expiration, termination, or transfer date.
- (v) Prior to the COD, the Parties shall cooperate to develop protocols as necessary to implement scheduling and settlements procedures consistent with this Agreement and the CAISO Tariff.

(b) CAISO Costs and Revenues.

- (i) Except as otherwise set forth in this Section 5.6(b), Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs and shall be entitled to all CAISO revenues or credits related to the Product Scheduled or delivered from the Delivery Point.

- (ii) Seller shall be responsible for and reimburse Buyer for all CAISO costs, charges, costs, and penalties which are related to (A) the unavailability of the Facility, (B) Seller's default, breach, or other failure to perform as required by this Agreement, (C) any failure by Seller to comply with the CAISO Tariff, any requirements imposed on it as the Facility owner, or the outage notification requirements set forth in the CAISO Tariff and this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), (D) any failure by Seller to comply with any Buyer Bid Curtailment, CAISO dispatch instruction, or Curtailment Order, (E) Facility Meter inaccuracies, and (F) penalties related to non-performance with respect to Ancillary Services and Residual Unit Commitment (as defined in the CAISO Tariff) awards due to conditions within Seller's control. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility. Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.
 - (iii) Seller shall be entitled to any Availability Incentive Payments (as defined in the CAISO Tariff) and shall be responsible for any Non-Availability Charges (as defined in the CAISO Tariff).
 - (iv) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTM Scheduled Energy and Delivered Energy during any Settlement Interval, except for those charges due solely to real-time uninstructed Energy caused by decreases in solar irradiance.
 - (v) Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.
- (c) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (d) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.
- (d) CAISO Charges Disputes. Seller may require Buyer (as the Facility's SC) to dispute CAISO settlements related to any costs or revenues for which Seller is responsible under

this Agreement. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with CAISO charges that Seller has directed Buyer to dispute.

- (e) Master File. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.
- (f) Seller Equipment for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer's SC.

5.6 Dispatch Down/Curtailment of Facility.

- (a) Curtailment.
 - (i) Seller shall reduce generation from the Facility by the amount and for the period required by the Reliability Coordinator, CAISO, Transmission Provider, or any successor thereto pursuant to a Curtailment Order. Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailment Order.
 - (ii) Seller shall reduce the generation from the Facility by the amount and for the period set forth in any CAISO notice related to a Buyer Bid Curtailment.
- (b) Failure to Comply. If Seller fails to comply with a Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Bid Curtailment period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Bid Curtailment or Curtailment Order.
- (c) Deemed Delivered Energy.
 - (i) If a Buyer Bid Curtailment occurs, Buyer shall pay Seller for Deemed Delivered Energy at the Contract Price.
 - (ii) In Seller's monthly invoice, Seller will reasonably calculate, consistent with this Agreement and Prudent Utility Practice the amount of Deemed Delivered Energy for the applicable month. The Parties shall share any documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations for the determination of Deemed Delivered Energy with the monthly invoice.
 - (iii) If either Party believes that the Final Output Estimate is an inaccurate estimate of the quantity of Energy the Facility reasonably could have generated based on Facility availability, insolation, and other relevant meteorological conditions, the Parties will mutually agree upon the use of (1) the Seller Day-Ahead Forecast, (2) the Day-Ahead forecast of the Facility's output from the CAISO's independent forecast provider, or (3) another mutually agreed upon methodology to determine the Final Output Estimate.
 - (iv) In the event of an overlapping Buyer Bid Curtailment and a Curtailment Order, Forced Outage, system emergency, or transmission outage, Seller shall exclude

Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy.

5.7 Forecasts.

- (a) Forecasts. Seller shall use generally accepted industry standards consistent with the forecasting requirements of the CAISO Tariff to produce the forecasts described in this Section 5.7. All forecasts shall be based on P-90 values. If Seller does not follow Section 4.8.2 of the CAISO Tariff with respect to forecasting, then upon Buyer's written request, Seller shall also retain, at Seller's expense, a third-party forecasting service reasonably acceptable to Buyer to produce such forecasts, in addition to those forecasts produced by Seller. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecast. Such forecast(s) shall be provided to Buyer and Buyer's SC in a manner reasonably acceptable to Buyer. If, during any given calendar month, the forecast error of such third-party service is larger than the forecast error of the forecasts produced by the Seller, determined as the sum of squared errors between the Seller Day-Ahead Forecast, for each respective forecast, and actual hourly production, then Buyer shall reimburse Seller for such third-party forecasting service costs.
- (i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("Annual Forecast") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer and Buyer's SC with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year.
 - (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update to the Annual Forecast for that calendar month ("Monthly Forecast"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.
 - (iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("Weekly Forecast"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.
 - (iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Seller Day-Ahead Forecast"). The Seller Day-Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.

5.8 Outages.

- (a) Planned Outages.
- (i) No later than January 15 of each Contract Year, and at least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall submit to Buyer the schedule of proposed Planned Outages ("Outage Schedule") for the following twelve (12) month period in a form reasonably specified by Buyer. The schedule of Planned Outages shall be subject to Buyer's review and approval.
 - (ii) Seller shall not schedule Planned Outages during the period of reliability accounting, initially the period between June 1st and October 31 of each year; however, such period shall be subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures. In the event that

Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

- (iii) If replacement capacity is required by the CAISO for the period of any Planned Outage, Seller shall provide the replacement capacity in the amount and for the duration specified by the CAISO pursuant to the CAISO Tariff.
 - (iv) If reasonably required in accordance with Prudent Operating Practices, Seller scheduled shall have the right, on no less than sixty (60) days advance notice to Buyer, to propose changes to the Outage Schedule. Buyer may provide comments no later than ten (10) days after receiving Seller's notice of proposed changes to the Outage Schedule and Buyer shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs and charges associated with such changes.
- (b) Forced Outages. Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator as soon as reasonably possible but no later than ten (10) minutes following the occurrence of a Forced Outage, or if Seller has knowledge that a Forced Outage will occur, within twenty (20) minutes of determining that such Forced Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Forced Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical. Seller shall promptly prepare and provide to Buyer, all reports of Forced Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any Applicable Laws.

ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE

6.1 Grant of Security Interests/Remedies.

- (a) First Priority Security Interest. To secure its obligations under this Agreement hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Development Assurance and Performance Assurance posted with Buyer in the form of cash collateral or cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) calendar days of the delivery of the Development Assurance or Performance Assurance, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Development Assurance or Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof, respectively.
- (b) Rights and Remedies. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date or the occurrence of any event under this Agreement where Buyer is entitled to draw upon the Development Assurance or Performance Assurance, Buyer may do any one or more of the following:
 - (i) exercise any of the rights and remedies of a secured party with respect to all Development Assurance or Performance Assurance, as applicable, including any such rights and remedies under Applicable Law;
 - (ii) draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Assurance or Performance Assurance; and
 - (iii) liquidate all Development Assurance or Performance Assurance, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature

whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

6.2 Development Assurance and Performance Assurance.

(a) Development Assurance.

- (i) Seller shall post Development Assurance in the amount of ___ dollars per kilowatt (\$___/kW) multiplied by the Guaranteed Installed Capacity in the form of cash or a Letter of Credit within ten (10) calendar days following the Execution Date and maintain the Development Assurance in full force and effect until such time as Seller posts the Performance Assurance pursuant to Section 6.2(b) below with Buyer. Seller shall replenish the Development Assurance within five (5) Business Days of any draw down of any portion of the Development Assurance for any reason permitted under this Agreement other than to satisfy a Damage Payment.
- (ii) Buyer shall be entitled to draw upon the Development Assurance posted by Seller for any reason permitted under this Agreement. Buyer shall also be entitled to draw upon the Development Assurance for any Damage Payment arising upon Buyer's declaration of an Early Termination Date prior to the Commercial Operation Date.
- (iii) Buyer shall return to Seller the Development Assurance less any amounts drawn in accordance with this Agreement: (A) within thirty (30) days after Seller posts Performance Assurance with Buyer, or (B) within sixty (60) days after the following have occurred: (1) early termination of the Agreement; (2) all payment obligations of Seller due and payable under this Agreement are paid in full, including compensation for the Damage Payment, indemnification payments, or other damages, (whether directly or indirectly such as through set-off or netting). With Buyer's consent, Seller may elect to apply the Development Assurance (or a portion thereof) toward the Performance Assurance.

(b) Performance Assurance.

- (i) Seller shall post Performance Assurance in an amount equal to the product of ___ dollars per kilowatt (\$___/kW) multiplied by the Installed Capacity in the form of cash or a Letter of Credit before the COD. Seller shall replenish the Performance Assurance within five (5) Business Days of any draw down of any portion of the Performance Assurance for any reason permitted under this Agreement other than to satisfy a Termination Payment.
- (ii) Buyer shall be entitled to draw upon the Performance Assurance posted by Seller for any reason permitted under this Agreement, including Buyer's declaration of an Early Termination Date after the Commercial Operation Date.
- (iii) Seller shall maintain Performance Assurance from the Commercial Operation Date until the following have occurred: (a) the Delivery Term has expired or terminated early, and; (b) all payment obligations of Seller due and payable under this Agreement are paid in full, including compensation for the Termination Payment, indemnification payments, or other damages (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

- (c) No Limitation of Damages. The amount of Development Assurance and Performance Assurance required under this Agreement shall not be deemed a limitation of damages.

6.3 Letter of Credit. Development Assurance or Performance Assurance provided in the form of a Letter of Credit shall be substantially in the form set forth in Exhibit H-1, or another form reasonably acceptable to Buyer, subject to the following provisions:

- (a) Renewal of Letter of Credit. If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 6, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis.
- (b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time: fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, becomes Bankrupt, indicates its intent not to renew such Letter of Credit, or fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within ten (10) Business Days after the date of Buyer's notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (i) or (ii) below is considered the "Cure"):
 - (i) providing a substitute Letter of Credit that is issued by an Eligible LC Bank other than the bank which is the subject of Buyer's notice to Seller in this Section 6.3(b); or
 - (ii) posting cash.
- (c) Failure to Cure. If Seller fails to cure, or if such Letter of Credit expires or terminates without a full draw thereon by Buyer or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall be deemed to have failed to meet the collateral requirements of Section 6.2 and Buyer may declare an Event of Default as set forth in Article 8.
- (d) Letter of Credit Costs. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE 7: FORCE MAJEURE

7.1 Remedial Action. Subject to the limitation on extensions of Milestones set forth in Section 5.3(e), a Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Claiming Party shall take all action necessary to remove such inability with all due speed and diligence. The Claiming Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting the Claiming Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.

7.2 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Claiming Party shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement, and the anticipated extent of any delay or interruption in performance. The Claiming Party's failure to give timely notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving notice materially prejudices the other Party.

7.3 Termination Due to Force Majeure Event. Subject to the provisions of Section 5.3(e) on extensions of Milestones, if the Claiming Party is prevented in any material respect from performing any material obligations under this Agreement solely due to a Force Majeure Event

lasting for a period of twelve (12) consecutive months or longer, either Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior written notice at any time following expiration of such period of twelve (12) consecutive months. In such event, Buyer shall promptly return to Seller all Development Assurance or Performance Assurance, as applicable, less any damages due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 7.3. This Section 7.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE 8: DEFAULT, REMEDIES, AND TERMINATION

8.1 Events of Default.

- (a) Events of Default. The occurrence of any of the following shall constitute an Event of Default by a Party:
- (i) the breach of any material obligation or covenant of this Agreement and such Party fails to cure such breach within sixty (60) days after written notification of default by the other Party; however, the Parties may mutually agree upon a longer period for cure if the breach cannot reasonably be cured within sixty (60) days, provided that the extended cure period will only continue for so long as the Party in breach is pursuing a cure with reasonable diligence;
 - (ii) subject to Sections 4.1(d) and 4.1(e), failure to make any payment when due under this Agreement within fifteen (15) Business Days after written notice that such payment is due;
 - (iii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and neither such circumstance nor the adverse effects of such circumstance are cured or remedied within thirty (30) days after written notice;
 - (iv) such Party becomes Bankrupt;
 - (v) subject to Section 11.1(d), such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) Seller Events of Default. The following shall constitute additional Events of Default by Seller:
- (i) subject to Section 5.3(i), the occurrence of any of the events set forth in Section 5.3(h);
 - (ii) Seller fails to satisfy any of the credit requirements of Article 6;
 - (iii) notwithstanding any other provision of this Agreement and subject to Section 3.4(c), Seller fails to deliver in any two (2) consecutive Contract Years, at least seventy percent (70%) of the sum of the expected Contract Quantities for the relevant Contract Years minus Seller Excused Hours;
 - (iv) notwithstanding any other provision of this Agreement and subject to Section 3.4(c), Seller fails to deliver at least fifty percent (50%) of the expected monthly quantities as set forth in the Annual Forecast minus Seller Excused Hours in any consecutive twelve (12) month period; or

- (v) except for Replacement Product, Seller delivers or attempts to deliver Energy to the Delivery Point that was not generated by the Facility.

8.2 Termination for Default.

- (a) Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred, is continuing and has not been cured, the other Party (the “Non-Defaulting Party”) shall have the right to:
 - (i) send notice, designating a day, no earlier than ten (10) calendar days and no later than sixty (60) days after the day such notice is deemed to be received, as the date on which this Agreement will terminate (the “Early Termination Date”);
 - (ii) accelerate all amounts owing between the Parties, terminate this Agreement and end the Delivery Term effective as of the Early Termination Date;
 - (iii) collect as of the Early Termination Date, (A) the Damage Payment in the case of a Seller Event of Default arising at any time prior to the Commercial Operation Date, including an Event of Default pursuant to Section 8.1, or (B) the Termination Payment in the case of an Event of Default by either Party arising after the Commercial Operation Date or in the case of a Buyer Event of Default arising prior to the Commercial Operation Date;
 - (iv) withhold any payments due to the Defaulting Party under this Agreement;
 - (v) suspend performance;
 - (vi) exercise its rights pursuant to Article 6 of this Agreement to draw upon and retain Development Assurance or Performance Assurance, as applicable; and
 - (vii) exercise any other right or remedy available at law or in equity to the extent otherwise permitted under this Agreement.
- (b) Calculation of Damage Payment. If the Early Termination Date occurs prior to the Commercial Operation Date due to a Seller Default, the Damage Payment shall equal the entire Development Assurance amount and any accrued interest. Buyer shall be entitled to retain for its own benefit those funds held as Development Assurance and any accrued interest, and any amount of Development Assurance that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller.
- (c) Calculation of Termination Payment. The Termination Payment shall be calculated by the Non-Defaulting Party as follows:
 - (i) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date.
 - (ii) If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Economic Losses and Costs, if any, resulting from such termination of this Agreement, the amount of the Termination Payment shall be limited to the amounts set forth in clause (b) of the definition of Termination Payment.
 - (iii) The Non-Defaulting Party is not required to enter into replacement transactions to establish a Termination Payment.
 - (iv) The Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
- (d) Notice of Damage Payment or Termination Payment. As soon as practicable after declaration of an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Damage Payment or Termination Payment due to or from the Defaulting Party to the Non-Defaulting Party, as applicable. The notice shall

include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment shall be made to the Non-Defaulting Party fifteen (15) Business Days after such termination payment notice is effective.

- (e) Disputes Regarding Damage Payment or Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Damage Payment or Termination Payment shall be resolved in accordance with Section 11.3.
- (f) Rights and Remedies are Cumulative. Except where this Agreement explicitly states that liquidated damages or another remedy is the exclusive remedy, the rights and remedies in this Agreement, including this Article 8, are cumulative.
- (g) Mitigation. The Non-Defaulting Party shall use commercially reasonable efforts to mitigate its Costs, Economic Losses, and damages resulting from any Event of Default.

8.3 Limitation of Liability/Liquidated Damages.

- (a) **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.**
- (b) **THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL SUCH OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFIT, OR OTHER BUSINESS INTERRUPTION DAMAGES, INTEREST CHARGES, OR COST OF CAPITAL; PROVIDED HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT RELATING TO EXPRESS REMEDIES OR MEASURE OF DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT TO THE EXTENT THAT ANY DAMAGES SET FORTH IN THIS AGREEMENT ARE LIQUIDATED, INCLUDING PAYMENTS SET FORTH IN SECTIONS 3.4, 3.6, 5.3, 5.6, AND 8.2, SUCH DAMAGES ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE HARM OR LOSS THAT WOULD OCCUR RELATED TO THE EVENTS DESCRIBED THEREIN. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE DAMAGES FOR THE**

CIRCUMSTANCES SET FORTH ABOVE WOULD BE IMPOSSIBLE OR DIFFICULT TO MEASURE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS IMPRACTICABLE. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671 AND THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

- (c) **BUYER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE COMPENSATION PROVIDED FOR IN ARTICLE 3, AND SECTIONS 5.6 AND 8.2.**
- (d) **EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE 8 SHALL BE CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.**

ARTICLE 9: INDEMNIFICATION

- 9.1 Seller Indemnification Prior to Commercial Operation Date.** Up to and including the Commercial Operation Date, Seller shall indemnify, defend, and hold harmless Buyer, and its officials, directors, agents and employees ("Buyer Indemnified Party"), from any claim, liability, loss, injury or damage arising out of, or in connection with, the negligence, willful misconduct or violation of Applicable Law by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the active negligence, willful misconduct or violation of Applicable Law by a Buyer Indemnified Party.
- 9.2 Seller and Buyer Indemnification after Commercial Operation Date.** After the Commercial Operation Date, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its elected officials, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party.
- 9.3 Environmental Indemnity.** Seller shall indemnify, defend, and hold harmless the Buyer Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.
- 9.4 Notice.** If an Indemnified Party determines that it is entitled to defense and indemnification under this Article 9, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES

- 10.1 Seller's Representations and Warranties.** In addition to the representations and warranties set forth in other sections of this Agreement, Seller represents and warrants to Buyer that as of the Execution Date:

- (a) Seller is duly organized and validly existing as a _____ under the laws of the State of _____, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement, and Seller is duly qualified in California and each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform all of its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery, and performance of this Agreement by Seller shall not conflict with its governing documents, any Applicable Laws, or any covenant, agreement, understanding, decree, or order to which Seller is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Seller and, as of the Execution Date, constitutes a legal, valid, and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Seller, threatened in writing, against Seller or any of its affiliates, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt;
- (g) Throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is pre-certified or certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (h) Throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- (i) All necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this Agreement; and
- (j) It will provide and convey all Environmental Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered, it holds the rights to all Environmental Attributes from the Facility, and it agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Facility.

- (k) As of the Effective Date, Seller represents and warrants to Buyer that it has not received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

10.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that as of the Execution Date:

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;
- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery, and performance of this Agreement by Buyer shall not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree, or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Execution Date, constitutes a legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (e) There are no actions, suits, proceedings, or investigations pending or, to the knowledge of Buyer, threatened in writing, against Buyer, at law or in equity, before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement; and
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

10.3 Covenants. In addition to other covenants contained in this Agreement, each Party covenants that throughout the Term:

- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law.

ARTICLE 11: MISCELLANEOUS

11.1 Assignment.

- (a) General Assignment. Except as provided in Sections 11.1(b) and 11.1(c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the

other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things, (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions of this Agreement, (iii) the transferring Party delivers financial statements, information, and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.

- (b) Assignment to Financing Providers. Notwithstanding any provision to the contrary in this Section 11.1, Buyer hereby consents to assignment of this Agreement by Seller as collateral for any financing or refinancing of the Facility to a Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the Seller's interest under this Agreement has been assigned. The notice shall include the names of the Lender's primary contact(s) to whom all communications may be addressed. Seller shall promptly notify Buyer of any changes to the information contained in the notice. As a condition to Buyer's consent to assignment, the following provisions shall apply to any assignment under this Section 11.1(b):
- (i) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by the Seller and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.
 - (ii) Buyer shall cooperate with Seller or a Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments, and other documents reasonably requested by Seller or Lender in order to complete any financing or refinancing and shall enter into reasonable agreements as necessary to provide for recognition by Buyer of the Lender's security interest in this Agreement and such other provisions as may be reasonably requested by Seller or any Lender, so long as the terms and conditions of such agreements are consistent with this Agreement and such amendments or agreements are reasonably acceptable to both Parties. All costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection with an assignment of this Agreement to a Lender shall be borne by Seller.
 - (iii) In the event of a Default under this Agreement, Buyer shall provide a copy of the notice of Default to the Lender pursuant to Section 8.2(a) at the same time as the notice is provided to Seller. Buyer shall accept a cure performed by a Lender and shall negotiate in good faith with the Lender as to the cure period(s) allowed for the Lender to cure any Event of Default. Buyer shall accept a cure by Lender so long as the cure is accomplished within the applicable cure period. Notwithstanding any Lender cure, Seller shall not be released and discharged from, and shall remain liable for, any and all obligations to the Buyer arising or accruing hereunder.
 - (iv) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must (i) assume all of Seller's obligations arising under this Agreement, and (ii) shall cure all defaults under this Agreement existing as of the date of change of title or control as required under this Agreement.
- (c) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 11.1, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall not require the prior written consent of Buyer.

Seller shall promptly notify Buyer of any direct or indirect change in control and shall provide any information reasonably requested by Buyer regarding the change in control, provided that this obligation does not apply to any direct or indirect owners of Seller's Parent. Seller acknowledges that its obligations under this Agreement remain in full force and effect notwithstanding such change in control and that Seller is solely responsible for ensuring that all required changes to its vendor certifications are promptly implemented.

- (d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 11.1 is void.

11.2 Proprietary or Confidential Information.

- (a) Confidential Information. Each Party understands and agrees that, in the performance of this Agreement or in contemplation thereof, the other Party may have access to private or confidential information and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns or controls the Confidential Information. Each Party agrees that all private and confidential information disclosed by one Party to the other Party shall be held in confidence and used only in performance of the Agreement; however, a Party may disclose the Confidential Information of the other Party to its officers, employees, agents, consultants, and contractors as necessary for the performance of its obligations under this Agreement and as necessary to comply with any applicable requirements or orders of a Governmental Authority. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.
- (b) Public Records Act and Sunshine Ordinance. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the Public Records Laws. If documents or information submitted to Buyer contain Seller's proprietary and confidential information and Seller claims that such information falls within one or more Public Records Laws exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY", and identify the specific lines containing such information (the "Confidential Information"). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the Public Records Laws, and other Applicable Laws).
- (c) Disclosure of Confidential Information by Buyer. In the event of a third-party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the Public Records Laws and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Francisco County before Buyer's deadline for responding to the disclosure request. If Seller fails to obtain such remedy prior to Buyer's deadline for responding to the request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third-party disclosure.
- (d) Non-Confidential Information. Notwithstanding anything to the contrary in this Section 11.2 nothing shall restrict any Party from using or disclosing information related to this Agreement, including Confidential Information if such information (i) is generally available to the public; (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action

as determined by such Party's attorney acting in good faith; or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) is furnished to the non-disclosing Party's Affiliates, or to the auditors, attorneys, advisors, or actual or potential lenders or investors of the non-disclosing Party and/or its Affiliates which are required to keep the information that is disclosed in confidence.

- (e) Nondisclosure of Private Information. If this Agreement requires Buyer to disclose "Private Information" to Seller within the meaning of San Francisco Administrative Code Chapter 12M, Seller shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing this Agreement. Seller is subject to the enforcement and penalty provisions in Chapter 12M.

11.3 Dispute Resolution; Choice of Law.

- (a) Negotiation; Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of this Agreement by negotiation. The status of any dispute or controversy notwithstanding, each Party shall proceed diligently with the performance of its obligations under this Agreement in accordance with and subject to the terms of this Agreement. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- (b) Governing Law; Venue. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. Venue shall be in the County of San Francisco, California.

11.4 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not fewer than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

11.5 General.

- (a) Entire Agreement. This Agreement, the exhibits, attachments, and any written and fully executed supplements hereto, any designated collateral, credit support, or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter.
- (b) Construction. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Amendments. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.
- (d) No Third-Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).
- (e) No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- (f) Change in Law. If any provision of this Agreement is rendered unlawful by action by any Governmental Authority, or any change in Applicable Law including the CAISO Tariff (a "Change in Law") occurring after the Execution Date, the remaining lawful obligations that arise under this Agreement shall not be affected. If the Change in Law results in

material changes to the Parties' obligations with regard to any Product sold hereunder so that the performance of this Agreement becomes impossible or impracticable, the Parties shall work in good faith to revise this Agreement so that the Parties may perform their obligations in a manner that maintains to the greatest extent practicable the original intent of the Parties and the benefits, burdens, and obligations under this Agreement. A change in cost shall not in and of itself be deemed to render this Agreement or any provision of this Agreement impossible or impracticable.

- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Assigns. This Agreement shall be binding on each Party's successors and assigns.
- (i) No Dedication. No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.
- (j) Relationship of the Parties. The duties, obligations and liabilities of the Parties are independent of one another and shall be limited to those expressly set forth herein. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Seller and Buyer intend to act as energy supplier and energy purchaser, respectively, and do not intend to act as, or to be treated as, partners in, co-venturers in, or lessor/lessee with respect to the Facility or any business related to the Facility.
- (k) Limitations on Contributions. By executing this Agreement, Seller acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors; Seller's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Seller. Seller certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.
- (l) Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate

this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.

(m) Nondiscrimination Requirements.

(i) Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(n) Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. Seller is subject to the enforcement and penalty provisions in Chapter 12K.

(o) Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(p) Submitting False Claims. Pursuant to San Francisco Administrative Code Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to Buyer for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to Buyer if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of Buyer a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by Buyer; (c) conspires to defraud Buyer by getting a false claim allowed or paid by Buyer; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Buyer; or (e) is a beneficiary of an inadvertent submission of a false claim to Buyer, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Buyer within a reasonable time after discovery of the false claim.

- (q) Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Seller shall comply with all applicable provisions of the Local Business Enterprise Ordinance, Chapter 14B of the San Francisco Administrative Code, and Seller is subject to the enforcement and penalty provisions in Chapter 14B.
- (r) First Source Hiring Program. Seller shall comply with all applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, and Seller is subject to the enforcement and penalty provisions in Chapter 83.
- (s) Use of City Opinion. Seller shall not quote, paraphrase, or otherwise refer to or use any opinion of Buyer, its officers or agents, regarding Seller or Seller's performance under this contract without prior written permission of the Buyer.
- (t) Business License Taxes. Seller agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the Term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Seller further acknowledges and agrees that City may withhold any payments due to Seller under this Agreement if Seller is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this Section 11.5(r) shall be made to Seller, without interest, upon full payment of all taxes owed by Seller and reinstatement of Seller's vendor certification
- (u) Conflict of Interest. Through its execution of this Agreement, Seller acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify Buyer if it becomes aware of any such fact during the term of this Agreement.
- (v) City Requirements. Seller shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of City and of all state, and federal laws in any manner affecting the performance of the Agreement, and must at all times materially comply with such local codes, ordinances, and regulations as they may be amended from time to time. Buyer shall use best efforts to provide notice to Seller of any such amendment to the City's Charter, codes, ordinances and regulations of which it becomes aware; however, Seller's obligations under this Section shall not be contingent on notice from Buyer.
- (w) Severability. Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision.
- (x) Survival. All rights pursuant to Section 3.5 (Environmental Attributes); Section 4.1(e) (Disputes and Adjustment of Invoices); Section 5.6(c) (CAISO Charges Invoices); Article 8 (Default; Remedies; and Termination), Article 9 (Indemnification), Section 11.2 (Proprietary or Confidential Information); Section 11.3 (Dispute Resolution; Choice of Law), Section 11.4 (Audit); Section 11.5(l) (Prohibition on Political Activity with City Funds); and Section 11.5(q) (City Opinion) shall also survive termination of this Agreement.

11.6 Mobile Sierra. Absent the prior written agreement of all Parties, the standard of review for changes to any rate, charge, term, or condition of service of this Agreement, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

- 11.7 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code and Buyer and Seller are “forward merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.
- 11.8 Notices.** Unless otherwise stated in this Agreement, any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, electronic mail, overnight courier, or mailed by certified mail, return receipt requested with postage prepaid, to the contacts set forth in the Cover Sheet. Either Party may change any information listed in the Notice section of the Cover Sheet, by written notice as provided in this Section. Any such notice, demand, request, or communication shall be deemed received on the Business Day on which the notice was transmitted if delivery was made by hand or electronic mail, or (ii) upon receipt by the receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid.
- 11.9 Counterparts.** This Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Agreement by fax or other electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

[Signature page follows on next page.]

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

City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF

Seller

By: _____

General Manager
San Francisco Public Utilities Commission

By: _____

Name: _____
Title: _____

Approved as to Form:

City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

SELLER DOCUMENTATION OF CONDITIONS PRECEDENT

Part I:

Seller shall provide to Buyer all of the following documentation at least five (5) Business Days prior to the Execution Date:

1. A copy of each of (a) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (b) the by-laws or other similar document of Seller as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
3. Evidence of Site control (e.g. lease with redacted price terms).
4. Evidence of CEC Certification or pre-certification received, as applicable.
5. A copy of the Interconnection Agreement, if any.
6. Insurance documentation as required in Exhibit D.
7. A copy of the most recent financial statements (which may be unaudited) from Seller's Parent.

Part II:

Seller shall provide to Buyer all of the following documentation in a timely manner following the Execution Date:

1. Evidence of all Permits received, as applicable, including but not limited to, any copies of all final environmental review documents.
2. A copy of the agreement for the Facility specified in Section 5.1(g).
3. A copy of the plan specified in Section 5.1(h).

EXHIBIT B

FACILITY DESCRIPTION AND SITE DRAWINGS

I. Facility Description

Facility name:

Facility physical address:

Technology type (including any applicable model):

Interconnection Point of Facility:

Interconnection Agreement Name/Number:

Assessor's Parcel No:

II. Operational Characteristics / Limitations

PMax of the Facility:

PMin of the Facility:

III. Site Drawings

A. Site Map

B. Single Line Diagram.

EXHIBIT C
CONTRACT QUANTITY

Contract Year	Contract Quantity (in MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

EXHIBIT D

INSURANCE COVERAGES

1. **Liability Coverages.** Without in any way limiting Seller's liability pursuant to the "Indemnification" section of this Agreement, Seller must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance:
 - (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and include a blanket waiver of subrogation; and
 - (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 - (d) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.
 - (e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.
2. **Additional Coverages**
 - (a) Property insurance, on an all-risk form, including earthquake and flood, for one hundred percent (100%) of the full replacement value of the Site and Facility or 125% of the Loss Limit of the 1/500 year earthquake/flood event as established by a Maximum Foreseeable Loss earthquake and flood study prepared by the applicable insurer in accordance with current industry standard. Such insurance shall, include Business Interruption coverage in an amount equal to twelve months of revenue from this Agreement.
3. **Endorsements.**
 - (a) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide include blanket endorsements:
 - (i) Name as Additional Insured, the City and County of San Francisco, its Officers, Agents, and Employees.
 - (ii) The certificate of insurance shall state that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
 - (b) All policies shall provide thirty (30) days' advance written notice of cancellation for any reason, intended non-renewal, or reduction in coverages, except ten (10) days' notice for non-payment of premiums.
4. **Length of Coverage.** Should any of the required insurance be provided under a claims-made form, Seller shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that,

should occurrences during the Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5. **Maintenance of Coverage.** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Buyer receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Buyer may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

Certificates. Prior to commencement of the Term, Seller shall furnish to Buyer certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A- , VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Buyer, in form evidencing all coverages set forth above. Approval of the insurance by Buyer shall not relieve or decrease Seller's liability hereunder.

EXHIBIT E

**CONSTRUCTION START
CERTIFICATION**

_____(Date)_____

This certification (“Certification”) of the Construction Start Date is delivered by _____ (“Seller”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer that Construction Start has occurred and:

- a) the Construction Start Date occurred on _____. (“Construction Start Date”);
- b) the Notice to Proceed was issued by Seller to the EPC Contractor, [EPC Contractor Name] on _____ (attached), and;
- c) mobilization at the Facility Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ____ day of _____.

Seller:

[Licensed Professional Engineer]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

License Number and LPE Stamp: _____

EXHIBIT F
PROGRESS REPORT

Each Progress Report must include the following items:

1. Executive Summary.
 2. Gantt chart schedule showing progress on achieving each of the Milestones.
 3. Description of any material planned changes to the Facility or the Project Site.
 4. Financing activities. Provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.
 5. Major equipment procurement activities. For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item to be procured or delivered in each Calendar Quarter.
 6. Construction Activities. Include information on the status of any construction-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the Facility infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other Interconnection Facilities that are the direct responsibility of the Facility.
 7. Interconnection Activities. Include information on interconnection-related factors that may affect the ability of the Facility to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Facility construction information), Network Upgrades, and grid outage and/or interconnection schedules.
 8. Startup. Include information on the status of activities related to preparation for Commercial Operation, including progress towards the items set forth in Exhibit H-2, the requirements and notifications of the grid operator and Transmission Provider, and any other activities that must be conducted before the Facility may deliver Energy to the grid and/or declare Commercial Operation.
- For items 4 through 8, include the progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements, and major equipment purchase orders showing the start dates, completion dates, and completion percentages. 8. Forecast of activities scheduled for the current calendar quarter.
9. List of issues that are likely to potentially affect Seller's Milestones.
 10. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
 11. CPUC General Order 156 supplier diversity reporting. Format to be provided by Buyer.
 12. Any other documentation reasonably requested by Buyer.

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION CERTIFICATION

This certification (“Certification”) of Commercial Operation is delivered by [LICENSED PROFESSIONAL ENGINEER] (“Engineer”) to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined in this Exhibit G-1 shall have the meanings assigned to these terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable, and interconnected.
2. The Facility is fully integrated and synchronized with the Transmission System.
3. The Facility’s Installed Capacity is no less than ninety-five percent (95%) and no more than one hundred percent (100%) of the Guaranteed Installed Capacity.
4. The Facility has met all Interconnection Agreement requirements and is capable of delivering Energy to the CAISO Balancing Authority up to the Guaranteed Installed Capacity.
5. The commissioning of all equipment for the Facility has been completed in accordance with the applicable manufacturer’s specifications.
6. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of the Guaranteed Initial Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
7. Authorization to parallel the Facility was obtained by the Transmission Provider on ____ [DATE] ____.
8. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Owner] on ____ [DATE] ____.
9. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on ____ [DATE] ____.

EXECUTED by ENGINEER this _____ day of _____, 20__.

Licensed Professional Engineer:

Signature: _____

Name: _____

Title: _____

EXHIBIT G-2
FORM OF INSTALLED CAPACITY CERTIFICATION

This certification of the Installed Capacity is delivered by [licensed professional engineer] to the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, in accordance with the terms of the Renewable Power Purchase Agreement dated _____, (“Agreement”) by and between Buyer and Seller. All capitalized terms used in this certification but not otherwise defined herein shall have the meanings set forth in the Agreement.

I hereby certify the following:

The initial Facility performance test under Seller’s EPC contract for the Facility demonstrated peak Facility electrical output of [] MW AC to the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“Installed Capacity”).

EXECUTED BY [LICENSED PROFESSIONAL ENGINEER]

This _____ day of _____, 20__.

[Licensed Professional Engineer]

Signature: _____

Name: _____

EXHIBIT H-1
LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: **[Insert issue date]**

Beneficiary: City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF
525 Golden Gate Avenue
San Francisco, CA 94102
Attn:

Applicant: **[Insert name and address of Applicant]**

Letter of Credit Amount: **[insert Amount]**

Expiry Date: **[insert expiry date]**

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it shall expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit J-2 hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. **Pursuant to the terms of that certain [insert name of the agreement] (the “Agreement”), dated [insert date of the Agreement], between Beneficiary and [insert name of Seller under the Agreement], Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by [insert name of Seller under the Agreement] under the Agreement; or**
 - B. **“Letter of Credit No. [insert number] shall expire in thirty (30) days or less and [insert name of Seller under the Agreement] has not provided replacement security acceptable to Beneficiary.**

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;

3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit shall be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we shall honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly. The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

EXHIBIT H-2
SIGHT DRAFT

TO: [INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$

DATE:

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF _____ THE AMOUNT
OF U.S.\$ _____ U.S. DOLLARS) DRAWN
UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

Name and Title

By: _____

EXHIBIT I
FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice is delivered by [SELLER ENTITY] (“Seller”) to the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF in accordance with the terms of the Energy Storage Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms not otherwise defined in this RA Notice shall have the meaning set forth in the Agreement.

UNIT SPECIFIC INFORMATION	
Resource Name	
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month	
Unit EFC by month	
Resource Type	
Minimum Qualified Flexible Capacity Category	
TAC Area	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Local Capacity Area	
Resource Category as defined by the CPUC	

Showing Month and Year	Quantity (MW)
[MM] [YY]	