



**RENEWABLE POWER PURCHASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO,**

**ACTING BY AND THROUGH ITS PUBLIC UTILITIES COMMISSION**

**AND**

**[SELLER]**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1: DEFINITIONS.....	1
ARTICLE 2: ARTICLE 2: CONDITIONS PRECEDENT AND TERM .....	11
2.1    Conditions Precedent to Term of Agreement.....	11
2.2    Term, Delivery Term, and Extension.....	11
ARTICLE 3: PURCHASE AND SALE.....	13
3.1    Purchase and Sale of Product .....	13
3.2    Contract Price.....	13
3.3    Contract Quantity .....	14
3.4    Guaranteed Energy Production .....	14
3.5    Environmental Attributes .....	15
3.6    Resource Adequacy.....	16
3.7    Compliance Cost Cap.....	17
3.8    Tax Credits and Incentives .....	17
3.9    Expansion Facility and Expansion Facility Product.....	18
3.10   Refurbishment of the Facility.....	18
ARTICLE 4: BILLING, PAYMENT, AND CERTIFICATION .....	19
4.1    Billing and Payment.....	19
4.2    Designated Fund/Limited Obligations .....	20
4.3    Guaranteed Maximum Costs .....	20
ARTICLE 5: FACILITY DEVELOPMENT, OPERATION, AND MAINTENANCE .....	21
5.1    General Obligations.....	21
5.2    The Facility .....	21
5.3    Facility Construction and Milestones.....	22
5.4    Milestone Excused Delay and Liquidated Damages .....	23
5.5    Operation and Maintenance.....	25
5.6    Scheduling, Forecasts, and Outages .....	26
ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE .....	29
6.1    Grant of Security Interests/Remedies.....	29
6.2    Development Assurance and Performance Assurance .....	30
6.3    Letter of Credit.....	31

6.4	Guaranty .....	31
ARTICLE 7: FINANCIAL STATEMENT .....		32
7.1	Seller’s Obligations .....	32
7.2	Buyer’s Obligations.....	32
ARTICLE 8: FORCE MAJEURE .....		32
8.1	Remedial Action.....	32
8.2	Notice .....	32
8.3	Termination Due to Force Majeure Event.....	32
ARTICLE 9: DEFAULT, REMEDIES, AND TERMINATION .....		33
9.1	Events of Default.....	33
9.2	Termination for Default.....	33
9.3	Limitation of Liability/Liquidated Damages.....	35
ARTICLE 10: INDEMNIFICATION .....		36
10.1	Indemnification .....	36
ARTICLE 11: REPRESENTATIONS AND WARRANTIES.....		36
11.1	Seller’s Representations and Warranties .....	36
11.2	Buyer’s Representations and Warranties.....	37
11.3	Covenants .....	38
ARTICLE 12: MISCELLANEOUS .....		38
12.1	Assignment.....	38
12.2	Proprietary or Confidential Information.....	39
12.3	Dispute Resolution; Choice of Law .....	40
12.4	Audit.....	41
12.5	General .....	41
12.6	Mobile Sierra.....	43
12.7	Forward Contract.....	43
12.8	Notices.....	43
12.9	Counterparts .....	44

## **EXHIBITS**

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

<b>EXHIBIT A</b>	SELLER DOCUMENTATION OF CONDITIONS PRECEDENT
<b>EXHIBIT B</b>	FACILITY DESCRIPTION AND SITE DRAWINGS
<b>EXHIBIT C</b>	CONTRACT QUANTITY
<b>EXHIBIT D</b>	INSURANCE COVERAGES
<b>EXHIBIT E</b>	CONSTRUCTION START CERTIFICATION
<b>EXHIBIT F</b>	QUARTERLY PROGRESS REPORT
<b>EXHIBIT G-1</b>	COMMERCIAL OPERATION CERTIFICATION PROCEDURE
<b>EXHIBIT G-2</b>	COMMERCIAL OPERATION CERTIFICATION
<b>EXHIBIT H</b>	DELIVERY START DATE CONFIRMATION
<b>EXHIBIT I</b>	FORM OF LETTER OF CREDIT
<b>EXHIBIT J</b>	CAISO CHARGE CODES
<b>EXHIBIT K</b>	BUYER AS SCHEDULING COORDINATOR

# POWER PURCHASE AGREEMENT

## COVER SHEET

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, Power Enterprise (“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.

**A. Transaction**

Product: Energy and associated Environmental Attributes and Capacity Attributes

Facility:

Address:

Expected Initial Capacity:

Contract Price:

Delivery Point:

Delivery Term:

Deliverability:

**B. Milestones**

Permitting Milestone:

Construction Milestone:

Major Equipment Milestone:

Commercial Operation Milestone:

**C. Seller Collateral:**

**D. Notices**

<p><b>Buyer:</b> City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF</p>	<p><b>Seller:</b></p>
<p><b>All Notices:</b>          525 Golden Gate Ave, 7th Floor          San Francisco, CA, 94102          Attn: Contract Administration          Phone: 415-554-4603          Facsimile: 415-554-3225</p>	<p><b>All Notices:</b>          Phone:          Facsimile:          Email:</p>
<p><b>Federal Tax ID Number:</b> 946000417</p>	<p><b>Federal Tax ID Number:</b>  <b>DUNS Number:</b></p>
<p><b>Invoices:</b>          PowerInvoices@sflower.org          Attn: Angie Lee          Phone: (415) 554-2451          Facsimile: (415) 554-3280          Email: <a href="mailto:Alee@sflower.org">Alee@sflower.org</a>           Attn: Daisy Ngan          Phone: (415) 551-4528          Facsimile: (415) 554-3280          Email: Dngan@sflower.org</p>	<p><b>Invoices:</b>          Attn:          Phone:          Facsimile:          Email:</p>
<p><b>Scheduling:</b>          Attn: Sunita Jones          Phone: (415) 554-1575          Email: SKJones@sflower.org          PowerScheduler@sflower.org</p>	<p><b>Scheduling:</b>          Attn:          Phone:          Facsimile:          Email:</p>
<p><b>Payments:</b>          PowerInvoices@sflower.org          Attn: Angie Lee          Phone: (415) 554-2451          Facsimile: (415) 554-3280          Email: <a href="mailto:Alee@sflower.org">Alee@sflower.org</a>           Attn: Daisy Ngan          Phone: (415) 551-4528          Facsimile: (415) 554-3280          Email: Dngan@sflower.org</p>	<p><b>Payments:</b>          Attn:          Phone:          Facsimile:          Email:</p>
<p><b>Wire Transfer:</b>          BNK:          ABA (ACH):          ACCT:</p>	<p><b>Wire Transfer:</b>          BNK:          ABA:          ACCT:</p>

<p><b>Credit and Collections:</b> Attn: Rich Morales Phone: (415) 551-2973 Facsimile: (415) 487-5258 Email: Rmorales@swater.org</p> <p><b>With additional Notices of an Event of Default or Potential Event of Default to:</b></p> <p>Attn: Michael Hyams Phone: (415) 554-1590 Email: MHyams@swater.org</p>	<p><b>Credit and Collections:</b> Attn: Phone: Facsimile: Email:</p> <p><b>With additional Notices of an Event of Default or Potential Event of Default to:</b></p> <p>Attn: Phone: Email:</p>
--	--

## 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.

**Administrative CAISO Charges:** Has the meaning set forth in Section 5.6(e)(i).

**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 Cover Sheet.

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

**Annual Forecast:** Has the meaning set forth in Section 5.6(e)(i).

**Applicable Law:** 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.

**Automated Dispatch System:** Has the meaning set forth in the CAISO Tariff.

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

**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.

**Bid Cost Recovery:** Has the meaning set forth in the CAISO Tariff.

**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.

**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 Section 5.6(b) results in a quantity of Delivered Energy that is less than the quantity of Energy in the Final Output Estimate for that Settlement Interval.

**Buyer DAM Bid Price:** The Buyer-determined price component of a bid that is used for an Economic Bid into the Day-Ahead Market, subject to adjustment pursuant to Section 5.6(b)(iii).

**Buyer Indemnified Party:** Has the meaning set forth in Section 10.1(a).

**Buyer RTM Bid Price:** The Buyer-determined price component of a bid that is used for an Economic Bid into the Real-Time Market, subject to adjustment pursuant to Section 5.6(b)(iii).

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

**CAISO Tariff:** The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

**Calendar Quarter:** Has the meaning set forth in Exhibit F.

**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.

**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 ERR for purposes of the California Renewables Portfolio Standard and that all Product 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 12.5(f).

**Charge Code:** Has the meaning set forth in the CAISO Tariff.

**City:** The City and County of San Francisco.

**CleanPowerSF:** Buyer's Community Choice Aggregation Program.

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

**Commercial Operation:** The condition of the Facility, whereupon it is certified by Seller to be operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

**Commercial Operation Date:** The date upon which Seller notifies Buyer that Commercial Operation has commenced by delivering to Buyer the COD Certification in accordance with Section 5.3(f).

**Commercial Operation Milestone:** Has the meaning set forth in Section 5.3(b)(iv).

**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 12.2(b).

**Construction Milestone:** Has the meaning set forth in Section 5.3(b)(ii).

**Construction Start Date:** The date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Facility.

**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 Delivery Start Date, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the Delivery Start Date.

**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.

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

**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.

**Curtailed Order:** An order of the PTO, distribution provider, Reliability Coordinator, and/or CAISO (whether directly or through a Scheduling Coordinator or the PTO), 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 PTO's electric system integrity or the integrity of other systems to which the CAISO or the PTO is connected, including curtailment in accordance with Seller's obligations under its Interconnection Agreement with the PTO or distribution operator.

**Customer Market Results Interface:** Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

**DA Percentage:** An amount equal to zero percent (0%) of the Day-Ahead Forecast initially, subject to adjustment pursuant to Section 5.6(d).

**Daily Liquidated Damages or Daily LD Amount:** For each day or portion of a day for which delay liquidated damages are payable under Section 5.4(d), an amount equal to the total amount of Development Assurance required hereunder divided by 365.

**Damage Payment:** The dollar amount to be posted as Development Assurance pursuant to Section 6.2(a)(i).

**Day-Ahead Forecast:** Pursuant to CAISO Tariff Section 4.8.2, the forecast of the Facility's output for each Day-Ahead Market interval provided by the CAISO's independent forecast provider or by Seller if Seller is certified by CAISO to submit its own forecast.

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

**Deemed Delivered Energy:** Has the meaning set forth in Section 5.6(b)(v).

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

**Delivered Energy:** Has the meaning set forth in Section 4.1(a)(i)(A).

**Delivery Point:** \_\_\_\_\_.

**Delivery Start Date:** Has the meaning set forth in Section 2.2(b)(i).

**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)(i) of this Agreement.

**Economic Bid:** Has the meaning set forth in the CAISO tariff.

**Early Termination Date:** Has the meaning set forth in Section 9.2(a)(i).

**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.

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

**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 or A- from S&P.

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

**Energy:** Three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses.

**Environmental Attributes:** Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the sale of generation from the Facility or Expansion Facility(ies) to Buyer under this Agreement, 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<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
- (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change 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.

**EPC Contract:** The Seller’s engineering, procurement and construction contract with the EPC Contractor.

**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 9.1.

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

**Execution Date:** Has the meaning set forth in the Cover Sheet.

**Expansion Facility:** Any expansion of the Facility from its Initial Capacity, or any other electricity generating facility owned or controlled by Seller or its affiliates, located at the Site. Each such expansion of the Facility or additional facility shall be deemed to be an “Expansion Facility.”

**Expansion Facility Product:** All Product, associated Environmental Attributes, Ancillary Services, contributions towards Resource Adequacy or reserve requirements (if any) and any other reliability or power attributes produced by Seller at any Expansion Facility.

**Expected Initial Capacity:** Has the meaning set forth in Section 3.3(a)(i).

**Extended Delivery Term:** Has the meaning set forth in Section 2.2(c).

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

**Facility Testing Completion:** Has the meaning set forth in Exhibit G-1.

**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 5.6(e).

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

**FMM Price:** The LMP for the CAISO Settlement Point for the relevant Settlement Interval in the FMM.

**Force Majeure:** 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 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, 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 PTO 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 Milestone 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) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure;
- (f) a Curtailment Order; or
- (g) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic, including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy generated by the Facility at a higher price.

**Forced Outage:** Any unplanned reduction or suspension of the Energy from the Facility or unavailability of the Product in whole or in part from a unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

**Forecast Fee:** Has the meaning set forth in the CAISO Tariff.

**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.

**GAAP:** The standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant Securities Exchange Commission rule.

**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, subject to Section 9.3. 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 Period:** Successive periods consisting of two (2) consecutive Contract Years with the first GEP Period commencing on the Delivery Start Date, 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)(ii).

**Good Utility Practice:** Has the meaning set forth in the CAISO Tariff.

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

**Guarantor:** With respect to Seller, any Person that (a) is reasonably acceptable to Buyer, (b) has a Credit Rating of A- or better from Standard & Poor's Financial Services or a Credit Rating of A3 or better from Moody's Investor Service, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

**Guaranty:** A guaranty from a Guarantor provided for the benefit of Buyer as reasonably acceptable to Buyer.

**Indemnified Party:** Has the meaning set forth in Section 10.1(b).

**Indemnifying Party:** Has the meaning set forth in Section 10.1(b).

**Installed Capacity:** The actual generating capacity of the Facility, measured at the pNode for the Facility and adjusted for ambient conditions on the date of the performance test.

**Interconnection Agreement:** The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the PTO, 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 PTO's system.

**Interconnection Facilities:** Has the meaning 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.

**Late Payment Penalty:** 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:** 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 J. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

**Licensed Professional Engineer:** A Person 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.

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

**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, subject to Section 9.3. 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. “Losses” shall exclude any (1) associated loss of investment tax credits and other lost tax benefits and (2) any costs, penalties, fees, or charges associated with the termination of related financing agreements or similar obligations.

**Major Equipment Milestone:** Has the meaning set forth in Section 5.3(b)(iii).

**Market Results Interface-Settlements:** Has the meaning set forth in the CAISO BPM for Definitions and Acronyms.

**Mechanical Completion:** Has the meaning set forth in Exhibit G-1.

**Monthly Forecast:** Has the meaning set forth in Section 5.6(e)(ii).

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

**Milestones:** The key development activities required for the construction and operation of the Facility, as set forth more particularly in Section 5.3(b).

**Moody’s:** Moody’s Investors Service, Inc.

**MW:** Megawatt.

**MWh:** Mega-watt hour.

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

**Net Buyer CAISO Settlements:** Has the meaning set forth in Section 5.6(c)(v).

**Net Buyer CAISO Settlements Protocol:** Has the meaning set forth in Section 5.6(c)(vii).

**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 9.2(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.

**Operational Limitations:** Those limitations set forth in Exhibit B of this Agreement.

**Participating Transmission Owner or PTO:** Has the meaning set forth in the CAISO Tariff. The PTO is \_\_\_\_\_.

**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(a)(ii) of this Agreement.

**Performance Liquidated Damages or Performance LDs:** Has the meaning set forth in Section 3.4(a)(ii) and Section 3.4(b)(i)(B).

**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 5.4(a).

**Permitting Milestone:** Has the meaning set forth in Section 5.3(b)(i).

**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:** The point on the electrical system where the Facility is physically interconnected with the PTO System as further described in the Interconnection Agreement.

**Positive Uninstructed Deviation Credit:** Has the meaning set forth in Section 5.6(b)(iv).

**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 Law.

**PTO System:** The transmission system owned by the Participating Transmission Owner.

**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.

**Quarterly Progress Report:** The report set forth in Exhibit F.

**RA Capacity:** Has the meaning set forth in the CAISO Tariff.

**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 law.

**Replacement Price:** In dollars per MWh (\$/MWh), Buyer's actual, reasonable and reasonably documented cost of Replacement Product, plus five percent (5%) of such cost for Replacement Product purchased by Buyer covering the period of Minimum Deliveries pursuant to Section 3.4(b); 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, plus five percent (5%) of such cost, 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.



**Resource Adequacy:** The resource adequacy capacity requirements established for load serving entities by the CPUC pursuant to the CPUC's existing or subsequent decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other Resource Adequacy obligations established by any other Governmental Authority having jurisdiction, including the CAISO..

**Resource Adequacy Costs:** Has the meaning set forth in Section 3.6(c).

**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.

**RTD:** Has the meaning set forth in the definition of CAISO Real Time Market in the CAISO Tariff.

**RTD Price:** The relevant LMP for the CAISO Settlement Point during the applicable RTD Settlement Interval.

**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 (as defined in the CAISO Tariff) and communicated to the Scheduling Coordinator for the Facility for use in submitting bids in the Real-Time Market.

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

**Scheduled Energy:** The Energy economically bid by the SC that clears the applicable CAISO market.

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

**Scheduling Infrastructure Business Rules:** Has the meaning set forth in the CAISO Business Practice Manual for Definitions and Acronyms.

**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 5.6(e)(iv).

**Seller Excused Product:** For any period of time, an amount of Energy expressed in MWh, equal to the Final Output Estimate, but which was not produced as a result of Curtailment Orders, Buyer Bid Curtailment, Force Majeure events, Buyer's breach or default hereunder or failure to accept delivered Product, or Forced Outages to the local transmission or distribution system.

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

**Settlement Point:** Means the CAISO designated pNode for the Facility: \_\_\_\_\_

**SFPUC:** The San Francisco Public Utilities Commission.

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

**Site Drawings:** Has the meaning set forth on Exhibit B.

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

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

**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 Losses and Costs, minus the Gains, which the Non-Defaulting Party incurs as a result of the termination of this Agreement, subject to Section 9.3, 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 (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) generated by the Facility and delivered to the Point of Interconnection prior to the Delivery Start Date.

**Three-Month Shortfall:** Has the meaning set forth in Section 3.4(b)(i)(A).

**WECC:** The Western Electricity Coordinating Council or successor agency.

**Weekly Forecast:** Has the meaning set forth in Section 5.6(e)(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 December 2010, 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 City 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 ("Term").
- (b) Delivery Term.

- (i) The Delivery Term shall commence on the first date that Buyer accepts delivery of Product under this Agreement (the “Delivery Start Date”) and continuing for \_\_\_\_\_ years (“Delivery Term”), unless terminated as provided by the terms of this Agreement.
  - (ii) The Delivery Start Date shall occur as soon as practicable once all of the following have been satisfied, but no later than ninety (90) days after the COD:
    - (A) Seller notifies Buyer of the Commercial Operation Date by delivering to Buyer the COD Certification in substantially the form set forth at Exhibit G-1, the Licensed Professional Engineer’s certificate or report as set forth in Section 2 of Exhibit G-1, and, if applicable, an updated Contract Quantity table in the form attached hereto as Exhibit C based on the Installed Capacity which updated Contract Quantity table shall automatically supersede the previous version of the Contract Quantity table set forth in Exhibit C without requiring an amendment of this Agreement;
    - (B) Seller notifies Buyer of the Delivery Start Date by delivering the Delivery Start Date Confirmation attached hereto as Exhibit H;
    - (C) Seller has obtained the precertification approval component of the CEC Certification requirement for the Facility;
    - (D) All of the applicable Conditions Precedent in Section 2.1(a) have been satisfied or waived in writing;
    - (E) Seller has demonstrated satisfaction of Seller’s other obligations under this Agreement that commence prior to or as of the Delivery Term, including taking all necessary steps to allow the RECs from the Facility to be tracked in WREGIS and transferred to Buyer and all other similar requirements applicable to Seller to enable Buyer to use such RECs for its RPS requirements; and
    - (F) Seller has delivered Performance Assurance to Buyer.
  - (iii) If Seller is unable to commence deliveries of Product under this Agreement within ninety (90) days of COD, Seller may request an extension of the Delivery Start Date by providing written notice to Buyer of the reasons for the delay and the term of the proposed extension no later than ten (10) Business Days prior to the expected Delivery Start Date. Buyer may grant the extension request at its sole discretion.
  - (iv) Seller shall take all necessary actions to obtain final CEC Certification of the Facility and creation of retroactive WREGIS RECs within one hundred and eighty (180) calendar days of the COD.
- (c) Extension of End of Delivery Term. At its sole discretion, Buyer may provide notice to Seller no later than twenty-four (24) months prior to the end of Delivery Term of its intent to (i) extend the Delivery Term of this Agreement (“Extended Delivery Term”), or (ii) purchase the Facility. Buyer and Seller shall promptly enter into good faith negotiations on the price and other terms that will apply to any Extended Delivery Term or Facility purchase and sale. If the Parties have not reached agreement on such price and other terms within ninety (90) days after delivery of Buyer’s notice under this Section 2.2(c) in the case of an Extended Delivery Term, or one-hundred and twenty (120) days in the case of a purchase and sale of the Facility, then neither Party shall have any further obligation to negotiate for an Extended Delivery Term or Facility purchase and sale, and Seller may enter into negotiations and definitive agreements with one or more third parties for the sale of the Product, the Facility, or any component thereof with respect to the period occurring after the end of the Delivery Term.

## ARTICLE 3: PURCHASE AND SALE

### 3.1 Purchase and Sale of Product.

- (a) **Transaction.** During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for delivered Product in accordance with the terms of this Agreement, unless specifically excused by the terms of this Agreement. Except for Replacement Product, in no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, or sell Product from the Facility to a third party (Subject to Sections 3.2(b), 3.2(c), 3.4(a), 3.4(b), and 3.9(b)). Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except for Test Energy.
- (b) **Title and Risk of Loss.** Title to and risk of loss as to all Product purchased by Buyer shall pass from Seller to Buyer at the Delivery Point. Subject to Section 5.6(c), Seller shall be responsible for any costs, fees, taxes, assessments, or charges associated with the Product or the delivery of the Product up to the Delivery Point and Buyer shall be responsible for any costs, or charges imposed on or associated with the Product or the delivery of the Product at and from the Delivery Point. Seller warrants that it shall deliver all Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.

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

- (a) **Test Energy Price.** For all Test Energy, Seller’s full compensation for Product sold to Buyer shall be the net amount resulting from (i) the credits and other payments received by Seller as the Scheduling Coordinator as a result of Test Energy from the Facility delivered by Seller prior to the COD, including revenues associated with CAISO dispatches and (ii) the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Global Resource ID for the Facility for, or attributable to, scheduling and deliveries from the Facility under this Agreement, which amount may be a negative or positive value.
- (b) **Excess Quantity.** Buyer has the right, but not the obligation, to purchase any Product in excess of one hundred and fifteen percent (105%) of the for the then-current Contract Year (“Excess Quantity”). Buyer shall pay Seller fifty percent (50%) of the Contract Price 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.
- (c) **Pre-FCDS Energy Price.** [IF APPLICABLE] For all Product delivered or tendered to Buyer prior to the date on which Seller has obtained a Full Capacity Deliverability Status Finding from the CAISO, Buyer shall pay Seller eighty percent (80%) of the Contract Price per MWh.
- (d) **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 excess

MWh in such Settlement Interval shall be zero dollars (\$0). If the Settlement Point LMP is less than the Buyer RTM Bid Price during such Settlement Interval, Seller shall pay to Buyer an amount equal to the positive difference between the Buyer RTM Bid Price and the Settlement Point LMP multiplied by the amount of the uninstructed Surplus Energy in MWh.

**3.3 Contract Quantity.** The Contract Quantity for Product is set forth in Exhibit C.

- (a) Capacity.
  - (i) As of the Execution Date, the Expected Initial Capacity of the Facility as of the Commercial Operation Date is \_\_\_\_\_ MW AC, net of all auxiliary loads, station electrical uses, and electrical losses occurring on the Facility side of the Settlement Point (the “Expected Initial Capacity”).
  - (ii) Seller shall use commercially reasonable efforts to ensure that the Installed Capacity of the Facility as of the Commercial Operation Date is same as the Expected Initial Capacity, but in no event shall be less than \_\_\_ MW AC or more than \_\_\_ MW AC, as measured at the Settlement Point. If applicable, Seller shall update the Contract Quantity table in Exhibit C to reflect the Facility’s Installed Capacity pursuant to Section 2.2(b)(ii)(A).
- (b) 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, Buyer shall purchase and accept from Seller at the Delivery Point, any Test Energy pursuant to the terms of this Agreement; provided that the decision to produce and deliver Test Energy hereunder shall be at the sole discretion of Seller. The scheduling and settlement requirements of Sections 5.6(b) – (c) shall not apply to Test Energy.

**3.4 Guaranteed Energy Production and Minimum Deliveries.**

- (a) 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”).
  - (i) Reporting. 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 thereof 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.
  - (ii) Performance LDs. 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 (“GEP Shortfall”) and the amount of the performance liquidated damages. Within thirty (30) days after the receipt of notice of the shortfall, Seller shall either (1) provide notice of its election to provide Replacement Product in the amount of the GEP shortfall, or (2) pay Buyer Performance LDs calculated as: the positive difference obtained by subtracting the (i) Contract Price from (ii) the Replacement Price; multiplied by the GEP shortfall (“Performance LDs”). The Parties agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller’s failure to meet the GEP would be difficult or impossible to predict with certainty and the Performance LD amount is a reasonable approximation of such damages.
  - (iii) Payment of LDs. If within ten (10) Business Days of receipt of notice of a GEP Shortfall, Seller does not either provide notice to Buyer of its election to provide Replacement Product or deliver payment of the Performance LD amount to Buyer, Buyer shall be entitled to collect Performance LDs by electing, in its sole discretion, one or more of the following payment methods:

- (A) drawing upon the Performance Assurance; and/or
  - (B) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (iv) Replacement Product. Seller may, as an alternative to payment of Performance LDs pursuant to this section, provide Replacement Product within ninety (90) days after the conclusion of the applicable GEP Period but within the same calendar year as the conclusion of the applicable GEP Period. The Replacement Product shall be delivered to Buyer at the NP 15 EZ Gen Hub upon a schedule reasonably acceptable to Buyer. Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 3.4(a) at the lower of: (1) the Contract Price, or (2) the hourly Day-Ahead Market price at the NP 15 EZ Gen Hub for the Replacement Product.
- (b) Minimum Deliveries.
- (i) Notwithstanding any other provision of this Agreement, if in any consecutive three (3) calendar month period of the Delivery Term, the actual Product deliveries plus Seller Excused Product are less than fifty percent (50%) of the quantities for each month as set forth in the applicable Annual Forecasts for that three (3) month period, Seller shall either:
    - (A) provide Replacement Product as set forth in Section 3.4(a)(iv), in the amount of the cumulative three month shortfall for the applicable months calculated as: (A) fifty percent (50%) of the Annual Forecast, minus (A) actual Product deliveries plus Seller Excused Hours (“Three-Month Shortfall”). Seller shall provide any Replacement Product required under this Section 3.4(b) no later than ninety (90) calendar days after Buyer’s notice, or;
    - (B) pay Buyer Performance LDs, calculated as set forth in Section 3.4(a)(ii) and treating the Three-Month Shortfall as the GEP Shortfall for the purposes of such calculation.
  - (ii) As set forth in Section 9.1(b)(iii), Seller’s failure to deliver at least fifty percent (50%) of the expected monthly quantities as set forth in the Seller’s Annual Forecast, excluding Seller Excused Hours, for twelve (12) consecutive months (measured as of the end of each month during the Delivery Term) shall constitute a default of this Agreement
- (c) Cure. Buyer’s receipt of Replacement Product or Performance LDs (whether paid by Seller, drawn from the Performance Assurance or set off against amounts owed to Seller), as applicable, shall cure the performance issue that triggered such remedy. The MWhs of Replacement Product delivered and the MWhs used in the calculation of Performance LDs which were paid to Buyer pursuant to Section 3.4(a) or 3.4(b), 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). The quantities of energy for which Seller paid Performance 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 sell and transfer to Buyer, and Buyer shall purchase and 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. In addition:
  - (i) Seller shall cause REC 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.
  - (ii) 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. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller.
  - (iii) 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.
  - (iv) 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.
  - (v) 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 Resource Adequacy.**

- (a) Full Capacity Deliverability Status. **[IF APPLICABLE]** Seller shall be solely responsible for and take all necessary actions to obtain a FDCC Finding for the Facility prior to the Delivery Start Date
- (b) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Facility's Installed Capacity, including Capacity Attributes, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a supply plan or Resource Adequacy plan. From the Execution Date, and for the duration of the Delivery Term, 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 all of the Installed Capacity of the Facility, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy requirements during the Delivery Term.
- (c) Availability Standards. Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable ("Resource Adequacy Costs").
- (d) NQC. If Seller is the SC, Seller shall use commercially reasonable efforts to (a) obtain a NQC determination for the Facility by September 1, XXXX, (b) cause the CAISO to establish a reasonable NQC value for the Facility, and (c) maintain a reasonable NQC value for the Facility. If Buyer is the SC, Seller shall take all commercially reasonable actions as necessary for Buyer to obtain and maintain a NQC value as set forth in this Section 3.6(d).

**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 annually at ten thousand dollars (\$10,000.00) per MW of Installed Capacity and in the aggregate throughout the Delivery Term at twenty thousand dollars (\$20,000.00) 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 third parties for obtaining, maintaining, conveying, or complying with: (i) CEC Certification, (ii) Environmental Attributes including WREGIS certificates, (iii) Capacity Attributes, and (iv) Sections 11.1(h)-11.1(k) ("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.
- (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 tax credits, deductions, and incentives related to the generation and sale of Energy or investments in the Facility shall be owned by Seller, including tax credits available under Section 45 of Subtitle A, Chapter 1A, Part IV and Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986 or any successor law.



Buyer agrees to cooperate with Seller, as may be necessary, to allow maximization of the value of, and realization of, all such tax credits and incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Product purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller of any such tax credits and incentives. Notwithstanding the foregoing, Seller's rights under this section shall not include anything that qualifies as Product (including any Environmental Attributes).

### **3.9 Expansion Facility and Expansion Facility Product.**

- (a) Buyer's Right of First Refusal. During the Term, Seller may, at its sole discretion, develop, finance, construct, and/or operate an Expansion Facility. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer, in writing, to sell the Expansion Facility Product to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Facility Product, the term, and other principal terms and conditions of the proposed sale. If Buyer wishes to accept such offer to purchase all (but not less than all) of the Expansion Facility Product, Buyer shall so notify Seller within ninety (90) calendar days of its receipt of such offer. Buyer and Seller shall promptly thereafter enter into good faith negotiation of commercial modifications to this Agreement incorporating such Expansion Facility Product offer.
- (b) Buyer's Right to Purchase Expansion Facility Product. If Buyer does not accept Seller's offer to purchase the Expansion Facility Product within ninety (90) calendar days of receipt of Seller's offer, Seller shall be deemed authorized to offer to sell that portion of the Expansion Facility Product to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer. If Seller offers to disaggregate the Expansion Facility Product for the purpose of selling the same to multiple independent buyers, Seller shall notify Buyer, in writing, of the terms and conditions of such offers, and Buyer shall again have the right of first refusal consistent with the terms set forth above for each of the lesser amounts being offered to the third parties. If Buyer does not purchase the Expansion Facility Product and Seller sells such Expansion Facility Product to a third party, Seller shall promptly certify, in writing, to Buyer that the terms and conditions of sale of such Expansion Facility Product to such third party, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer, and, Seller shall provide the relevant final contract and any other supporting documentation for such certification by Buyer. Upon the sale of such Expansion Facility Product in compliance with this Agreement, Buyer shall have no further rights to be offered or to purchase such Expansion Facility Product. Buyer's refusal, in writing, of the Expansion Facility Product from one Expansion Facility shall not affect Buyer's right to purchase the Expansion Facility Product from a subsequently developed Expansion Facility under the terms of this Agreement. Notwithstanding any provision to the contrary herein, Seller shall not sell or provide the Expansion Facility Product to any third party, unless Seller can do so without compromising in any material way its ability to provide the Product or Expansion Facility Product, if any, to Buyer hereunder. The materiality of any such impact shall be determined by Buyer, acting in its reasonable discretion.

- 3.10 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 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 Installed Capacity. Nothing in this Section 3.10 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 Installed Capacity.

## 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. 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 (I) the Energy delivered pursuant to this Agreement as measured by CAISO metering and settlement data ("Delivered Energy") for such Settlement Interval, multiplied by (II) the Contract Price, plus
  - (B) the product of (I) the Deemed Delivered Energy for such Settlement Interval, multiplied by (II) the Contract Price, minus
  - (C) the Net Buyer CAISO Settlements for such Settlement Interval, minus
- $n$
- $\sum_{i=1}^n$
- the Positive Uninstructed Deviation Credit.  $Monthly\ Payment = \sum_{i=1}^n \{ [Delivered\ Energy\ MWh_i] \times [Contract\ Price_i\ \$] \} + ([Deemed\ Delivered\ Energy\ MWh_i] \times [Contract\ Price_i\ \$]) - [Net\ Buyer\ CAISO\ Settlements_i] - [Positive\ Uninstructed\ Deviation\ Credit].$
- (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)(iii), 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) any other amounts due to or from Seller hereunder.
- (b) Payment. All invoices 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 ("Due Date"). Any amount not paid by the Due Date shall be considered late and Buyer shall pay a Late Payment Penalty 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 ("Late Payment Penalty").
- (c) 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 Penalty 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.

- (d) 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 Penalty 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.
- (e) CAISO Adjustments. If the CAISO makes any adjustment to any CAISO meter data 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.
- (f) Meter Malfunction. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility meter(s). 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 it shall be promptly repaired or replaced at Seller's cost.

#### **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.**

- (a) Records. Seller shall keep complete and accurate 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 Good Utility 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) CAISO Agreements. Seller shall enter into any agreements with the CAISO required by the CAISO for generators delivering power into the CAISO-controlled grid.
- (d) Insurance. Seller shall obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit D.
- (e) Vendor Certification. Seller shall obtain, renew, and maintain, all City required vendor certifications and requirements during the Term of this Agreement.

### **5.2 The Facility.** Throughout the Term of this Agreement, Seller covenants that at its sole cost and expense, unless otherwise specifically stated in this Agreement, it shall:

- (a) Construction. Design, develop, finance, and construct the Facility.
- (b) Prevailing Wages. Pay any person performing labor in the construction of the Facility not less than the 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 or subcontract related to the construction of the Facility the payment of the prevailing wage rate for the work to be performed.
- (c) 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 delivery and sale of the Product pursuant to this Agreement.
- (d) Interconnection and Transmission. Arrange and pay for any and all necessary Electric System Upgrades, obtain any required regulatory approvals, and execute all necessary agreements sufficient to allow Seller to interconnect the Facility to the CAISO grid and

deliver the Product to the Delivery Point by the Delivery Start Date in accordance with this Agreement. Seller shall comply with all applicable requirements, rules, contractual obligations, and Good Utility Practice to maintain any Interconnection Facilities and to cause delivery of the Product to Buyer.

- (e) FCDS. [IF APPLICABLE] Ensure that the interconnection, distribution and/or transmission arrangements for the Facility provide for Full Capacity Deliverability Status as of the Delivery Start Date.
- (f) Notice of Expected Initial Capacity. If applicable, within fifteen (15) calendar days of the later of (i) obtaining the authority to construct for the Facility from the applicable Governmental Authority or (ii) Seller's receipt of the system impact and facility cost studies from the PTO, Seller shall provide written notice to Buyer of any changes to the Initial Capacity of the Facility as set forth in Exhibit B (which shall be subject to the Capacity limits described in Section 3.3(a)(ii)) and specifying other material Facility design details.
- (g) RPS and Green-e® Certification. Prior to the Delivery Start Date and throughout the Delivery Term, take all actions necessary to obtain and maintain for the Facility (i) CEC Certification, (ii) tracking and transfer of RECs associated with the Product in WREGIS, and (iii) Green-e® Energy eligibility for renewable energy and greenhouse gas emissions as administered by the Center for Resource Solutions.
- (h) 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.

### 5.3 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. The Parties further agree that the Milestones must be achieved in accordance with Section 5.4 or Buyer shall suffer damages which are difficult to estimate with reasonable certainty. Seller shall provide Buyer with any requested information to support the achievement of Milestones within ten (10) Business Days of any request by Buyer.
- (b) Milestone Schedule. Seller covenants that it shall diligently pursue to completion each of the following Milestones:
  - (i) By \_\_\_\_\_, Seller shall have received all final, and non-appealable discretionary authorizations, approvals, waivers, exceptions, variances, filings, permits, orders, and licenses, including all actions and approvals required under applicable environmental laws, that are required for the construction, of the Facility (the "Permitting Milestone");
  - (ii) By \_\_\_\_\_, Seller shall have commenced construction of the Facility (the "Construction Milestone") as evidenced by 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 provided a notice to Buyer substantially in the form and substance to that attached as Exhibit E;

- (iii) By \_\_\_\_\_, Seller shall have caused on-Site delivery of major components of the Facility, including but not limited to modules and inverters (“Major Equipment Milestone”); and,
- (iv) By \_\_\_\_\_, Seller shall achieve Commercial Operation (the “Commercial Operation Milestone”).
- (c) Quarterly Progress Report. Seller shall provide to Buyer a Quarterly 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. Seller shall also agree 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.
- (d) Certification of Completion of Milestone. Except as provided in Section 5.3(f) below, 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.
- (e) 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 including a Force Majeure event, Seller shall notify Buyer in writing as soon as is reasonably practical. Such notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Milestone(s), and otherwise describe Seller’s plan for meeting the Milestone(s). 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.
- (f) Notice of Commercial Operation Date and COD Certification. Seller shall provide written notice to Buyer thirty (30) calendar days in advance of the anticipated Commercial Operation Date and shall provide Buyer with written weekly updates thereafter detailing the status of Seller’s progress in achieving Commercial Operation. On the Commercial Operation Date, Seller shall deliver to Buyer by electronic mail or facsimile, with originals to follow by hand-delivery, courier or mail service, the COD Certification in the form attached hereto as Exhibit G-2.

#### **5.4 Milestone Excused Delay and Liquidated Damages.**

- (a) Permitted Extensions to Milestones. The following events constitute “Permitted Extensions”:
  - (i) In the event that a Force Majeure event causes a delay to the achievement of any Milestone, each Milestone deadline may be extended by that number of calendar days the applicable Force Majeure event actually delays completion of such Milestone, provided that Seller works diligently to resolve the effect of the Force Majeure event on the achievement of the Milestone. Notwithstanding the foregoing, in no event shall the combined extensions under this Section 5.4(a) for any individual Milestone arising from Force Majeure events exceed six (6) months in the aggregate.
  - (ii) If Seller has used commercially reasonable efforts (including Seller’s timely filing of required documents, payment of all applicable fees, and compliance with all applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority, as applicable), including efforts to obtain Facility interconnection, to meet the Milestones, but such Milestones cannot be met and Seller has worked diligently to resolve the delay, Seller may request Milestone extensions for up to six (6) months in the aggregate, which Buyer may grant in its reasonable discretion.

- (b) Notice. If Seller claims a Permitted Extension, Seller shall provide Buyer with sixty (60) days' notice prior to the applicable Milestone, which 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.
- (c) Maximum Delay.
- (i) In no event shall the combined Permitted Extensions under this Section 5.4 for all Milestones combined exceed twelve (12) months in the aggregate.
  - (ii) If on any given day two or more events cause delay to a Milestone at the same time (i.e., occur concurrently), Seller shall only be entitled to one (1) day of delay for such day.
- (d) Daily LD Amount. Seller shall be liable to Buyer for liquidated damages for each day or portion of a day of unexcused delay in a Milestone in an amount equal to the Daily LD Amount. Buyer shall promptly provide invoices to Seller for Daily LD Amounts for the relevant number of unexcused days of delay on a monthly basis. If Buyer does not receive payment of the invoice from Seller within five (5) Business Days after Seller's receipt of the invoice from Buyer, at Buyer's sole discretion, Buyer shall be entitled to collect the Daily LD Amount by one or more of the following:
- (i) drawing upon the Development Assurance; and/or
  - (ii) setting off against any amounts owed to Seller by Buyer under this Agreement.
- (e) No Limitation of Damages. The Parties agree that Buyer's receipt of the Daily LD Amount shall (i) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article 9, and (ii) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's termination right pursuant to Section 5.4(g) or Article 9. The Parties further agree that, consistent with Section 9.3(b), the damages Buyer would incur due to Seller's failure to meet the Milestone(s) would be difficult or impossible to predict with certainty and the Daily LD Amount is a reasonable approximation of such damages.
- (f) Refund of Daily LD Amounts. If Seller achieves Commercial Operation by the Commercial Operation Milestone, all Daily LD Amounts paid by Seller shall be refunded to Seller. Seller shall include a request for refund with the first invoice to Buyer.
- (g) Termination of Agreement. Buyer may terminate this Agreement by written notice to Seller if:
- (i) the combined Permitted Extensions for all Milestones exceed twelve (12) months in the aggregate, or
  - (ii) Seller fails to pay, or discontinues paying, any or all of the Daily LD Amount 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, or
  - (iii) Seller continues to timely pay Daily LD Amounts, but unexcused delays and Permitted Extensions exceed twelve (12) months in the aggregate.
- (h) Damage Payment. Upon termination of this Agreement under Section 5.4(g), Buyer shall be entitled to collect the Damage Payment within ten (10) days of Seller's receipt of an invoice from Buyer by one or more of the following:
- (i) drawing upon the Development Assurance;

- (ii) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer;
- (iii) setting off against any amounts owed to Seller by Buyer under this Agreement.

Receipt of the Damage Payment shall be Buyer's sole and exclusive remedy in the event of a Buyer termination under Section 5.4(g).

- (i) Additional Extension. Notwithstanding the foregoing, the Parties may mutually agree in writing to an extension of the Commercial Operation Milestone of up to thirty (30) days beyond the maximum twelve (12) month period for Permitted Extensions with payment of the Daily LD Amount by Seller. Buyer may not terminate this Agreement for failure to achieve the Commercial Operation Milestone during the mutually agreed upon extension period so long as Seller continues to pay the Daily LD Amount.

## 5.5 Operation and Maintenance.

- (a) Operation and Maintenance. Seller shall be solely responsible for the ownership, operation, maintenance, and repair of the Facility in accordance with this Agreement, all Applicable Laws, the requirements of the CAISO, NERC and WECC, all applicable contractual obligations and Permits, and in accordance with Good Utility 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) 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) CAISO and WECC Requirements and Good Utility Practice. Each Party shall perform in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs, and protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Good Utility Practice.
- (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. All Energy from the Facility must be delivered through a CAISO revenue meter dedicated solely to the Facility. The meter data will account for transformer losses and will be programmed to reflect losses to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant Buyer read-only rights to retrieve the meter reads from the Customer Market Results Interface, via website and direct download, and directly from the CAISO meter(s) at the Facility site through both (i) physical access and (ii) remote electronic read-only access. 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.
- (e) Facility Data. Seller shall take all steps necessary to authorize Buyer to obtain read-only access to (i) all Customer Market Results Interface data for the Facility, including market awards, expected energy and energy forecasts, (ii) all Scheduling Infrastructure Business Rules energy bids for the Facility, and (iii) all Market Results Interface-Settlements meter data for the Facility. If requested by Buyer, Seller shall provide access to Automated



Dispatch System data for the Facility through the Seller's Scheduling Coordinator or scheduling agent in a format reasonably acceptable to Buyer.

## 5.6 Scheduling, Forecasts, and Outages.

### (a) Scheduling Coordinator Services.

- (i) Seller shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility.
- (ii) Upon ninety (90) days prior written notice to Seller, Buyer may elect to become the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility and for the delivery of Product to and from the Delivery Point. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility. The Parties agree that, as of the date that Buyer assumes Scheduling Coordinator responsibilities pursuant to this Section, the amendments to this Agreement set forth in Exhibit K shall automatically take effect without further action of the Parties.
- (iii) Each Party shall use commercially reasonable efforts as necessary to facilitate the other Party's efforts to meet its obligations under applicable CAISO, PTO, FERC, CEC, or other Governmental Authority requirements.

### (b) Scheduling.

- (i) Day-Ahead Scheduling. For any period of time for which the DA Percentage is greater than zero percent (0%), Seller shall submit Economic Bids at the Settlement Point in the Day-Ahead Market for volumes equal to the DA Percentage multiplied by the Day-Ahead Forecast for the applicable period and specifying a bid price equal to the Buyer DAM Bid Price. For any period of time for which the DA Percentage is zero percent (0%), Seller shall not submit Economic Bids at the Settlement Point in the Day-Ahead Market. Notwithstanding anything to the contrary in this Agreement, the DA Percentage shall be consistent with any applicable Resource Adequacy obligations incurred on behalf of the Facility.
- (ii) Real-Time Market Scheduling. Seller shall submit Economic Bids or Self-Schedules at the Settlement Point into the Real-Time Market (including both the FMM and the RTM) at the Buyer RTM Bid Price and specifying volumes equal to the Final Output Estimate for the applicable Real-Time Market period.
- (iii) Changes to DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price. Buyer may change the DA Percentage, the Buyer RTM Bid Price, and/or the Buyer DAM Bid Price once every thirty (30) days by providing written notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new value(s) and the effective date for the change; provided, however, the DA Percentage must be greater than or equal to zero percent (0%) and less than or equal to one-hundred percent (100%).
- (iv) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive uninstructed deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").
- (v) Deemed Delivered Energy.

- (A) If a Buyer Bid Curtailment occurs, in Seller’s monthly invoice Seller will reasonably calculate, consistent with Good Utility Practice, the difference in MWh between the Final Output Estimate and actual Delivered Energy attributable to such Buyer Bid Curtailment (“Deemed Delivered Energy”). 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.
  - (B) 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 Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast, or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
  - (C) In the event of an overlapping Buyer Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy.
  - (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Contract Price for Deemed Delivered Energy.
- (c) CAISO Costs and Revenues.
- (i) Seller shall be responsible for “Administrative CAISO Charges”, which are defined as:
    - (A) the Forecast Fee assessed to the Facility;
    - (B) the CAISO Resource Adequacy Costs associated with the Facility, including the cost of providing Buyer with replacement Capacity Attributes in the event that Seller is deficient meeting its Capacity Attribute obligations under this Agreement due to Facility outages or derates or fails to comply with its obligations under Section 3.6(b);
    - (C) all CAISO costs, penalties and other charges (such as the Scheduling Coordinator ID Charge) that are assessed to the Facility or the Scheduling Coordinator for the Facility that are not related to the:
      - (1) generation, operation, or dispatch of the Facility;
      - (2) scheduling in the CAISO markets; and
      - (3) delivery of the Product to the Delivery Point.
    - (D) all CAISO costs related to participation in CAISO variable or intermittent energy resource programs.
  - (ii) Seller shall be responsible for CAISO charges, costs, and penalties resulting from (A) the unavailability of the Facility, (B) Seller’s failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (C) any other failure by Seller to comply with the CAISO Tariff, this Agreement, or with any Buyer Bid Curtailment, CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(g), and (D) penalties related to non-performance with respect to Ancillary Services and Residual Unit Commitment awards due to conditions within Seller’s control.

Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.

- (iii) 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 Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.
  - (iv) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD 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) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges but excluding those set forth in Section 5.6(c)(i)-(iv)), ("Net Buyer CAISO Settlements") and as identified in Exhibit J.
  - (vi) CAISO Charges. 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.
  - (vii) Exhibit J sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(c). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Buyer CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(c). In the event that the Charge Codes agreed to by the Parties in the Net Buyer CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Buyer CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(c).
- (d) Variable or Intermittent Energy Resource Programs. During the Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Seller's sole cost to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.
- (e) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. 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 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 with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty-four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer’s discretion in order to conform to the CAISO’s Availability Assessment procedures).
- (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, in a format specified by Buyer, 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.
- (f) Planned Outages. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer’s request.
- (g) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing no more than twenty-four (24) hours thereafter. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, whenever the Facility is returned to service.
- (h) Curtailment. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, 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.

## **ARTICLE 6: DEVELOPMENT AND PERFORMANCE ASSURANCE**

### **6.1 Grant of Security Interests/Remedies.**

- (a) 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) Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, 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 the law then in effect;
  - (ii) draw on any outstanding Letter of Credit or Guaranty 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) 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) Provision of Security by Seller. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:
  - (i) Development Assurance. Development Assurance in the amount of sixty dollars (\$60) per kW AC multiplied by the Expected Initial Capacity. Seller shall post Development Assurance in the form of cash, a Letter of Credit, or Guaranty within ten (10) calendar days following the Execution Date until such time as Seller posts the Performance Assurance pursuant to Section 6.2(a)(ii) below with Buyer.
  - (ii) Performance Assurance. Performance Assurance in the amount equal to five percent (5%) of the product of (A) the Contract Quantity, multiplied by (B) the Contract Price, multiplied by (C) the number of Contract Years remaining in the Delivery Term. Seller shall post Performance Assurance in the form of cash, a Letter of Credit, or a Guaranty from the Commercial Operation Date and ending at the expiration of the Delivery Term; provided that, with Buyer's consent, Seller may elect to apply a portion of the Development Assurance toward the Performance Assurance. The amount of the Performance Assurance shall be adjusted on the first day of each Contract Year to reflect the remaining revenue to Seller under this Agreement.
- (b) No Limitation of Damages. The amount of Development Assurance and Performance Assurance required under this Agreement shall not be deemed a limitation of damages.
- (c) Use of Development Assurance. Buyer shall be entitled to draw upon the Development Assurance posted by Seller for any reason permitted under this Agreement until the Development Assurance is exhausted. 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.

- (d) Termination of Development Assurance. Buyer shall return the Development Assurance to Seller less any amounts drawn in accordance with this Agreement: (i) within thirty (30) days after Seller posts Performance Assurance with Buyer or (ii) within sixty (60) days after early termination of the Agreement pursuant to Section 2.1(c), Section 5.4(g), or Article 9. The Development Assurance (or portion thereof) shall be returned unless, with Buyer's consent, Seller elects to apply the Development Assurance (or a portion thereof) toward the Performance Assurance.
- (e) Use of Performance Assurance. 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.
- (f) Return of Performance Assurance. Buyer shall return the unused portion of Performance Assurance to Seller within thirty (30) days after the following has occurred: (i) the Term of the Agreement has ended, or an Early Termination Date has occurred; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to a Damage Payment, Termination Payment, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

**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 I-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), (ii), or (iii) 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);
  - (ii) providing a Guaranty; or
  - (iii) 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 9.
- (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.

**6.4 Guaranty.** Seller shall replace the Guaranty in the event that Seller Guarantor fails to meet the required criteria for a Guarantor under this Agreement within five (5) Business Days following Buyer's written request for replacement of the Guaranty. Seller shall provide for the benefit of the Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria

set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit. If Seller fails to provide replacement Development or Performance Assurance as required in this Section 6.4, then Buyer may declare an Event of Default as set forth in Article 9.

## ARTICLE 7: FINANCIAL STATEMENT

- 7.1 Seller's Obligations.** If requested by Buyer, Seller shall deliver to Buyer (i) within six (6) months following the end of each fiscal year, a copy of Seller's and Seller's Parent's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), and (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's and Seller's Parent's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller and of Seller's Parent on behalf of Seller's Parent; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.
- 7.2 Buyer's Obligations.** If requested by Seller, Buyer shall deliver to Seller (i) within six (6) months following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year), (ii) within sixty (60) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, and (iii) on a timely basis, such other financial and operational information as may be reasonably requested by the Seller's financing parties. In all cases, the audited statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP, provided, however, that should any statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

## ARTICLE 8: FORCE MAJEURE

- 8.1 Remedial Action.** Subject to the limitation on extensions of Milestones set forth in Sections 5.4(a) and (c), 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 Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The non-performing 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 that 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.
- 8.2 Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event 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.
- 8.3 Termination Due to Force Majeure Event.** Subject to the provisions of Section 5.4(a) and (c) on extensions of Milestones, if a 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 LD amount paid by or due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 8.3. This Section 8.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

## ARTICLE 9: DEFAULT, REMEDIES, AND TERMINATION

### 9.1 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(c) and (d), 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 12.1(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 2.2(b)(iii), Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Delivery Start Date;
  - (ii) Subject to Section 5.4(a), the occurrence of any of the events set forth in Section 5.4(g);
  - (iii) Notwithstanding any other provision of this Agreement and subject to Section 3.4(c), Seller's failures to deliver at least fifty percent (50%) of the expected monthly quantities as set forth in the Annual Forecast minus Seller Excused Hours for any consecutive twelve (12) month period shall constitute an Event of Default; or
  - (iv) Seller fails to satisfy any of the credit requirements of Article 6.

### 9.2 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 9.1, or (B) the Termination Payment if any Event of Default by either Party arose 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 Termination Payment.
- (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 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 be the sole and exclusive remedy available to the Non-Defaulting Party in connection with its termination of this Agreement if any Event of Default arose after the Commercial Operation Date, and shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages.
  - (v) Section 4.3 of this Agreement is not a limitation on Buyer’s liability for a Termination Payment.
- (c) Notice of 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 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 Termination Payment shall be made to the Non-Defaulting Party fifteen (15) Business Days after such termination payment notice is effective.
- (d) Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within fifteen (15) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Section 12.3.

- (e) Liquidated Damages. The Parties agree that the Damage Payment to be paid by Seller shall be considered liquidated damages and not a penalty, in accordance with Section 9.3(b).

### 9.3 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, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; 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 THE LIQUIDATED DAMAGES AND DAMAGE PAYMENTS SET FORTH IN SECTIONS 3.4(a)(ii), 3.4(b)(ii)(A), 5.4(d), 5.4(h), AND 9.2(a)(iii) ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE DAMAGES 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.**
- (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 ARTICLES 3 AND 4, AND SECTIONS 5.6 and 9.2.**
- (d) **EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE 9 SHALL BE**

**CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.**

**ARTICLE 10: INDEMNIFICATION**

**10.1 Indemnification.**

- (a) 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.
- (b) 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.
- (c) Notice. If an Indemnified Party or Buyer Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, 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 11: REPRESENTATIONS AND WARRANTIES**

**11.1 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) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);
- (h) Subject to Section 2.2(b)(iv), throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 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;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) It will pay prevailing wages as set forth in Section 5.2(b).

**11.2 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;
- (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; and
- (g) It is a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

**11.3 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 12: MISCELLANEOUS

**12.1 Assignment.**

- (a) General Assignment. Except as provided in Sections 12.1(b) and (d), 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 hereof, (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 12.1, 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 12.1(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 9.2(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 12.1, 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 12.1 is void.

## **12.2 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. 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 Law).
- (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 12.2 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.

### **12.3 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.

**12.4 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.

**12.5 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 (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 implementation of this Agreement becomes impossible or impracticable, the Parties shall work in good faith to revise this Agreement in a manner that maintains to the greatest extent practicable the original intent of the Parties under this Agreement so that the Parties may perform their obligations regarding the purchase and sale of Product. If the Parties cannot reach a good faith agreement on amendments, the Agreement shall be terminated by mutual agreement without liability for either Party.
- (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. Through execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services or for the furnishing of any material, supplies or equipment to City, whenever such transaction would require approval by City's elective officer of the board on which that elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either: (1) the termination of negotiations for such contract, or (2) three months after the date this Agreement is approved by the City's elective officer or the board on which that elective officer serves.
- (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. The terms and provisions of Chapter 12.G are incorporated herein by this reference. 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) Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. 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.

- (o) 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.
- (p) Compliance with Laws. 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 and all applicable laws 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.
- (q) 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.
- (r) 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.
- (s) Survival. All rights pursuant to (i) Section 3.5 (Environmental Attributes); Section 4.1(d) (Disputes and Adjustment of Invoices); Article 9 (Default; Remedies; and Termination), (iii) Article 10 (Indemnification), (iv) Section 12.2 (Proprietary or Confidential Information); (v) Section 12.3 (Dispute Resolution; Choice of Law), and (vi) Section 12.4 (Audit); (vii) Section 12.5(l) (Prohibition on Political Activity with City Funds); and (viii) Section 12.5(o) (City Opinion) shall also survive termination of this Agreement.

**12.6 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).

**12.7 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

**12.8 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, facsimile, 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, facsimile 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.

**12.9 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 facsimile or other 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: \_\_\_\_\_  
Harlan L. Kelly, Jr.  
General Manager  
San Francisco Public Utilities Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to Form:

Dennis J. Herrera  
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 Project Labor Agreement, if any, for the Facility.

## **EXHIBIT B**

### **FACILITY DESCRIPTION AND SITE DRAWINGS**

#### **I. Facility Description**

Facility name:

Facility physical address:

Technology type (including any applicable model):

Expected Initial Capacity:

Interconnection Point of Facility:

Interconnection Agreement:

Assessor's Parcel No:

#### **II. Operational Characteristics / Limitations**

PMax of the Facility:

Minimum operating capacity:

#### **III. Site Drawings**

A. Site Map

B. Single Line Diagram.

**EXHIBIT C**  
**CONTRACT QUANTITY**

<b>Contract Year</b>	<b>Contract Quantity (in MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	

\_\_\_\_\_ Dated as of Seller Execution.

\_\_\_\_\_ Dated as of Commercial Operation Date.

## 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.
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 all of the following:

- a) the EPC Contract related to the Facility was executed on \_\_\_\_\_ with [EPC Contractor name];
- b) [permitting agency name] \_ issued grading permits to the Seller on \_\_\_\_\_;
- c) the Notice to Proceed was issued on \_\_\_\_\_ (attached), and;
- d) 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**

### **QUARTERLY PROGRESS REPORT**

#### **INSTRUCTIONS.**

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Renewable Power Purchase Agreement by and between \_\_\_\_\_, (“Seller”) and the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) dated \_\_\_\_\_ (the “Agreement”).

Commencing in the calendar month of the effective date of the Agreement, and every three months thereafter (“Calendar Quarter”), Seller shall prepare and submit to Buyer a Progress Report containing the information set forth in this Exhibit G (“Progress Report”). The Progress Report shall review the status of each Milestone of the construction schedule for the Facility and Seller shall identify any issue which in Seller’s reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

1. Any material matter or issue arising in connection with a Permit, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of an Applicable Law, actual or threatened opposition to the granting of a necessary Permit, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Facility, attaining any Milestone, or obtaining any contemplated agreements with other Persons which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
2. Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Facility, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
3. A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
4. Any material change in the Seller’s schedule for initiating or completing any material aspect of the Facility;
5. The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

Each overview subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to \_\_\_\_\_, together with all attachments and exhibits.

#### **A. Executive Summary.**

Provide an overview of the Facility, including technology, size, location, and ownership, and a brief chronological cumulative summary of the major activities completed at the Facility. Include the date each item was added to the summary.

**B. Financing Activities.**

- 1. Overview of 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.
- 2. Recent financing activities.** Describe in detail the financing activities that occurred during the previous Calendar Quarter.
- 3. Expected financing activities.** List the financing activities that are expected to be performed during the current Calendar Quarter.

**C. Major Equipment Procurement.**

- 1. Overview of 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.
- 2. Recent major equipment procurement activities.** Describe in detail the major equipment procurement activities that occurred during the previous Calendar Quarter.
- 3. Expected major equipment procurement activities.** List the major equipment procurement activities that are expected to be performed during the current Calendar Quarter.

**D. 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.

- 1. Overview of major construction activities.** Provide a summary of the status and progress of each major construction activity for all portions of the Facility, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each Calendar Quarter.
- 2. Look-ahead construction schedule.** Provide a look-ahead construction schedule covering the following Calendar Quarter.

**E. 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.

- 1. Overview of interconnection activities.** Provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.
- 2. Recent interconnection activities.** Describe in detail the interconnection activities that occurred during the previous Calendar Quarter.
- 3. Expected interconnection activities.** List the interconnection activities that are expected to be performed during the current Calendar Quarter.

**F. 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 PTO, and any other activities that must be conducted before the Facility may deliver Energy to the grid and/or declare Commercial Operation.

1. **Overview of startup activities.** Provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.
2. **Recent startup activities.** Describe in detail the startup activities that occurred during the previous Calendar Quarter.
3. **Expected startup activities.** List the startup activities that are expected to be performed during the current Calendar Quarter.

I, \_\_\_\_\_, on behalf of and as an authorized representative of \_\_\_\_\_, do hereby certify that the information contained in this Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Facility as of the date specified below.

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

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

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

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

**EXHIBIT G-1**  
**COMMERCIAL OPERATION CERTIFICATION**

In accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (the "Agreement") by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF ("Buyer") and \_\_\_\_\_ ("Seller") to declare and recognize the Commercial Operation Date of the Facility, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

1. A certification from an authorized officer of Seller, substantially in the form of Exhibit G-2 dated as of the Commercial Operation Date; and
2. A certificate or report from a Licensed Professional Engineer containing all of the following:
  - (a) A statement that the Facility has achieved Mechanical Completion and the date on which it was achieved;
  - (b) A statement that the Facility has successfully achieved Facility Testing Completion and the dates on which Seller has accepted the test results;
  - (c) A statement that the electrical collection system for the Facility comprising the total installed power capacity referenced in (b) is substantially complete, functional, and energized for the Facility;
  - (d) A statement that the Facility performance test under Seller's EPC contract demonstrated peak Facility electrical output of \_\_\_MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("Installed Capacity"); and
  - (e) A statement that the Facility has achieved Substantial Completion and the date on which it was achieved.
3. Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the applicable requirements for the interconnection of the Facility to the CAISO Grid and delivery of Product to the Delivery Point.
4. Seller has provided final Site Drawings to Buyer.
5. Definitions.
  - (a) "Mechanical Completion" means that (i) all components and systems of the Facility have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or 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.
  - (b) "Facility Testing Completion" means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as "Facility Testing") as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Facility has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) verify peak electrical output of no less than ninety percent (90%) of the Contract Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the performance test; and (iii) to assure warranty coverage for equipment and systems over their warranty periods.

- (c) “Substantial Completion” means when the following has occurred: (i) the Facility is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Facility in the use for which it is intended; (ii) the Facility has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Facility is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

**EXHIBIT G-2**  
**COMMERCIAL OPERATION CERTIFICATION**

This certification (“Certification”) of Commercial Operation 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 the following:

2. Mechanical Completion of the Facility was achieved on \_\_\_\_[DATE]\_\_\_\_.
3. Facility Testing Completion successfully occurred on: [Seller to indicate each type of Facility Testing and date completed]
  - a. NAME OF TEST [DATE]
  - b. NAME OF TEST [DATE]
  - c. NAME OF TEST [DATE]
4. Substantial Completion of the Facility was achieved on \_\_\_\_[DATE]\_\_\_\_.
5. Pre-parallel inspection of the Facility was successfully completed on \_\_[DATE]\_\_.
6. Authorization to parallel the Facility was obtained on \_\_\_\_[DATE]\_\_\_\_.
7. Telemetry / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Facility on \_\_\_\_[DATE]\_\_\_\_.
8. Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Facility on \_\_\_\_[DATE]\_\_\_\_.
9. Power system stabilizer testing and calibration was obtained for the Facility on \_\_\_\_[DATE]\_\_\_\_ or,  was not required.
10. Full Capacity Deliverability Status Finding from CAISO was obtained for the Facility on \_\_\_\_[DATE]\_\_\_\_ or,  was not required because the Facility is Energy Only.
11. The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on \_\_\_\_[DATE]\_\_\_\_.
12. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on \_\_\_\_[DATE]\_\_\_\_.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Facility to provide Product and meet, at a minimum, the requirements indicated herein.



EXECUTED by SELLER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Seller:**

Signature: \_\_\_\_\_

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

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

**EXHIBIT H**

**DELIVERY START DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between the City and County of San Francisco, acting by and through its Public Utilities Commission, CleanPowerSF, (“Buyer”) and \_\_\_\_\_ (“Seller”), this letter (“Delivery Start Date Confirmation Letter”) serves to document Seller’s notice that (i) the requirements for the occurrence of the Delivery Start Date have been satisfied as specified in the Agreement, as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Delivery Start Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Seller represents to Buyer that it has been granted status as an Exempt Wholesale Generator. In addition, Seller provides the following FERC Tariff information for reference purposes only.

Tariff:

Dated:

Docket Number:

IN WITNESS WHEREOF, Seller has caused this Delivery Start Date Confirmation Letter to be duly executed by its authorized representative as of the date provided below.

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

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

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

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

**ADDED TO Exhibit G**

**EXHIBIT I-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 I-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

By: \_\_\_\_\_  
Name and Title

## EXHIBIT J

### CAISO CHARGE CODES

The following table sets forth an initial allocation of Charge Codes, which may represent credits as well as charges, between Buyer and Seller as they exist as of the Effective Date of this Agreement with the objective of implementing cost and revenue allocations pursuant to Section 5.6. The Parties shall mutually agree upon a final allocation in the Net Buyer Settlements Protocol.

<b>Charge Code</b>	<b>Charge Code Description</b>	<b>PPA Section</b>	<b>Net Buyer CAISO Settlements</b>	<b>Net Seller CAISO Settlements</b>
701	Forecasting Service Fee	5.6(e)(i)(A)	Excluded	Included
1487	Emergency Energy Exchange Program Neutrality Adjustment	5.6(e)(iii)	Excluded	Included
1591	EP Penalty Charge due CAISO Trustee	5.6(e)(ii)	Excluded	Included
1592	EP Penalty Allocation Payment	5.6(e)(vi)	Included	Excluded
4515	GMC Bid Transaction Fee	5.6(e)(i)(C)	Excluded	Included
4560	GMC Market Services Charge	5.6(e)(i)(C)	Excluded	Included
4561	GMC System Operations Charge	5.6(e)(i)(C)	Excluded	Included
4575	GMC – Scheduling Coordinator Identification Charge	5.6(e)(i)(C)	Excluded	Included
6011	Day Ahead Energy, Congestion, Loss Settlement	5.6(e)(vi)	Included	Excluded
6100	Day Ahead Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6124	No Pay Spinning Reserve Settlement	5.6(e)(ii)	Excluded	Included
6170	Real Time Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6200	Day Ahead Non-Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6224	No Pay Non-Spinning Reserve Settlement	5.6(e)(ii)	Excluded	Included
6270	Real Time Non-Spinning Reserve Capacity Settlement	5.6(e)(vi)	Included	Excluded
6460	FMM Instructed Imbalance Energy	5.6(e)(vi)	Included	Excluded
6470	Real Time Instructed Imbalance Energy Settlement	5.6(e)(vi)	Included	Excluded
6475	Real Time Uninstructed Imbalance Energy Settlement	5.6(e)(vi)	Included*	Excluded*
6482	Real Time Excess Cost for Instructed Energy Settlement	5.6(e)(vi)	Included	Excluded
6486	Real Time Excess Cost for Instructed Energy Allocation	5.6(e)(iii)	Excluded	Included
6488	Exceptional Dispatch Uplift Settlement	5.6(e)(vi)	Included	Excluded
6500	Day Ahead Regulation Up Capacity Settlement	5.6(e)(vi)	Included	Excluded
6524	Non Compliance Regulation Up Settlement	5.6(e)(ii)	Excluded	Included
6570	Real Time Regulation Up Capacity Settlement	5.6(e)(vi)	Included	Excluded
6600	Day Ahead Regulation Down Capacity Settlement	5.6(e)(vi)	Included	Excluded
6620	RUC and RTM Bid Cost Recovery Settlement	5.6(e)(vi)	Included	Excluded
6624	Non Compliance Regulation Down Settlement	5.6(e)(ii)	Excluded	Included
6630	IFM Bid Cost Recovery Settlement	5.6(e)(vi)	Included	Excluded

6636	IFM Bid Cost Recovery Tier 1 Allocation	5.6(e)(vi)	Included	Excluded
6670	Real Time Regulation Down Capacity Settlement	5.6(e)(vi)	Included	Excluded
6800	Day Ahead Residual Unit Commitment (RUC) Availability Settlement	5.6(e)(vi)	Included	Excluded
6824	No Pay Residual Unit Commitment (RUC) Settlement	5.6(e)(ii)	Excluded	Included
7070	Flexible Ramp Forecast Movement Settlement	5.6(e)(vi)	Included	Excluded
7071	Daily Flexible Ramp Up Uncertainty Capacity Settlement	5.6(e)(vi)	Included	Excluded
7077	Daily Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7078	Monthly Flexible Ramp Up Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7081	Daily Flexible Ramp Down Uncertainty Capacity Settlement	5.6(e)(vi)	Included	Excluded
7087	Daily Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7088	Monthly Flexible Ramp Down Uncertainty Award Allocation	5.6(e)(iii)	Excluded	Included
7251	Regulation Up Mileage Payment	5.6(e)(vi)	Included	Excluded
7261	Regulation Down Mileage Payment	5.6(e)(vi)	Included	Excluded
7891	Monthly CPM Settlement	5.6(e)(vi)	Included	Excluded
7989	Invoice Deviation Interest Distribution	5.6(e)(i)(C)	Included	Excluded
7999	Invoice Deviation Interest Allocation	5.6(e)(i)(C)	Included	Excluded
8526	GIP Forfeited Deposit Allocation	5.6(e)(vi)	Included	Excluded
8830	Monthly Resource Adequacy Availability Incentive Mechanism Settlement	5.6(e)(i)(B)	Excluded	Included
8831	Monthly Resource Adequacy Availability Incentive Mechanism Allocation	5.6(e)(i)(B)	Excluded	Included

\* Note that while CC6475 is the responsibility of the Buyer, Seller shall credit Buyer for certain related adverse settlements from uninstructed Delivered Energy in excess of the Dispatch Instruction, per Section 5.6(b)(iv).

**EXHIBIT K**  
**BUYER AS SCHEDULING COORDINATOR**

**A. Transfer of SC Obligations.**

- (1) Upon transfer of Scheduling Coordinator obligations from Seller to Buyer pursuant to Section 5.6(a)(ii) of the Agreement, Seller shall not (i) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (ii) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
- (2) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Seller's SC. These actions shall include (i) submission of a designation of a new SC for Seller to the CAISO, (ii) causing the newly designated SC to submit a letter to the CAISO accepting the designation, and (iii) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Seller's SC.

**B. Amendments to the Agreement.** As of the date that Buyer or its designee assumes Scheduling Coordinator responsibilities, the following amendments to the Agreement shall take effect.

- (1) Amendments to Article 1 – Definitions.
  - (i) The following definitions shall be deleted from Article 1:
    - Buyer DAM Bid Price**
    - Customer Market Results Interface**
    - DA Percentage**
    - Net Buyer CAISO Settlements**
    - Net Buyer CAISO Settlements Protocol**
    - Scheduling Infrastructure Business Rules**
  - (ii) The following definitions shall be added to Article 1:
    - Net Seller CAISO Settlements: has the meaning set forth in Section 5.6(f)(v).**
    - Net Seller CAISO Settlements Protocol: Has the meaning set forth in Section 5.6(e)(vi).**
- (2) Section 4.1(a), Monthly Invoices, shall read as follows:

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. Buyer or its Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days following receipt of the settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller. 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 (I) the Energy delivered pursuant to this Agreement as measured by CAISO metering and settlement data ("Delivered Energy") for such Settlement Interval, multiplied by (II) the Contract Price, plus
  - (B) the product of (I) the Deemed Delivered Energy for such Settlement Interval, times (II) the Contract Price, [plus/minus]
  - (C) the Net Seller CAISO Settlements for such Settlement Interval

$$\text{Monthly Payment} = \sum_{i=1}^n \{ [\text{Delivered Energy MWh}_i] \times [\text{Contract Price}_i \$] \} + [\text{Deemed Delivered Energy MWh}_i] \times [\text{Contract Price}_i \$] \text{ +/- } [\text{Net Buyer CAISO Settlements}_i]$$

- (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)(iii), 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) any other amounts due to or from Seller hereunder.

- (3) Section 5.5(d) Metering, is deleted in its entirety and replaced with the following:

Metering. All Energy from the Facility must be delivered through a CAISO revenue meter dedicated solely to the Facility. The meter data will account for transformer losses and will be programmed to reflect losses to the Delivery Point, consistent with CAISO requirements. Seller shall (subject to Section 4.1(f)) bear all costs relating to all metering equipment installed to accommodate the Facility. Seller shall grant to the Scheduling Coordinator (whether Buyer or Buyer's designee) rights to retrieve the meter reads directly from the CAISO meter at the Facility site through both (i) physical access and (ii) remote electronic 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 in a form reasonably acceptable to Buyer.

- (4) Section 5.5(e) Facility Data, is deleted in its entirety.

- (5) Section 5.6, Scheduling, Forecasts, and Outages, shall be deleted in its entirety and replaced with the following:
- (a) Scheduling Coordinator Services.
- (i) Buyer shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility. Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents reasonably necessary to authorize, designate, or re-designate Buyer or Buyer's designee as Scheduling Coordinator for the Facility.
  - (ii) Seller shall not (A) authorize or designate any other party to act as Scheduling Coordinator for the Facility, or (B) revoke Buyer's authorization to act as Seller's Scheduling Coordinator for the Facility unless agreed to in writing by Buyer.
  - (iii) At least ninety (90) days prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or Buyer's designee as Scheduling Coordinator for the Facility. These actions shall include (A) submitting a designation of a new Scheduling Coordinator for Seller to the CAISO, (B) causing the newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation, and (C) informing Buyer and/or its designee of the last date on which Buyer or its designee will be Scheduling Coordinator for the Facility.
  - (iv) Each Party shall use commercially reasonable efforts to facilitate the other Party to meet its respective obligations under applicable CAISO, PTO, FERC, CEC, or other requirements of a Governmental Authority.
  - (v) CAISO Notices and Data.
    - (A) Buyer shall provide Seller with access to a remotely-accessible system through which Seller shall submit to Buyer 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 will cooperate with Buyer to provide such notices and updates. If the system is not accessible, Seller shall promptly submit such information to Buyer telephonically or electronically to the personnel designated in the Cover Sheet to receive such information.
    - (B) Seller shall provide information to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor systems) for the Facility consistent with this Agreement and the CAISO Tariff. Neither Party shall change such data without the other Party's prior written consent.
- (b) Real-Time Market Scheduling. Buyer will submit Economic Bids or Self-Schedules at the CAISO Settlement Point into the Real-Time Market (including both the FMM and the RTD).
- (i) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility in excess of the CAISO dispatch instruction (positive deviations) for that Settlement Interval ("Positive Uninstructed Deviation Credit").

- (ii) Deemed Delivered Energy.
  - (A) If a Bid Curtailment occurs, Seller will reasonably calculate consistent with Good Utility Practices the difference in MWh between the Final Output Estimate for the Facility and actual Delivered Energy attributable to such Bid Curtailment (“Deemed Delivered Energy”). Parties shall share documentation necessary to create or support such calculation. Seller shall include supporting documentation and calculations related to such Deemed Delivered Energy with the monthly invoice.
  - (B) 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 agree upon the use of (1) the Day-Ahead Forecast, (2) the Seller Day-Ahead Forecast, (3) the third-party version of the Seller Day-Ahead Forecast, or (4) another mutually agreed upon methodology to determine the Final Output Estimate.
  - (C) In the event of an overlapping Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy.
  - (D) In addition to paying Seller for all Delivered Energy hereunder, Buyer shall pay Seller the Contract Price for Deemed Delivered Energy.
- (c) CAISO Costs and Revenues.
  - (i) Seller shall be responsible for “Administrative CAISO Charges” or amounts payable to the CAISO by the Facility’s Scheduling Coordinator, defined as:
    - (A) the Forecast Fee assessed to the Facility;
    - (B) the CAISO Resource Adequacy Costs associated with the Facility;
    - (C) all CAISO costs, penalties and other charges (such as the Scheduling Coordinator ID Charge) that are assessed to the Facility or the Scheduling Coordinator for the Facility that are not related to the:
      - (1) generation, operation, or dispatch of the Facility;
      - (2) scheduling in the CAISO markets; and
      - (3) delivery of the Product to the Delivery Point.
    - (D) all CAISO costs related to participation in CAISO variable or intermittent energy resource programs.
  - (ii) Seller shall be responsible for CAISO charges, costs, and penalties resulting from (A) the unavailability of the Facility, (B) Seller’s failure to notify Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), or (C) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO dispatch instruction or Curtailment Order, or the Forced Outages notice provision in Section 5.6(k), (D) any Seller actions or inactions that cause Buyer or Buyer’s SC to fail to comply with the CAISO Tariff, including any notice

requirement for outages or Forced Outages, or any CAISO dispatch instruction or Curtailment Order, or (E) penalties related to non-performance with respect to an Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for any non-performance penalties due solely to decreases in solar irradiance.

- (iii) 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 or Buyer's SC due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.
  - (iv) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD 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) Charges, costs, penalties, and other amounts described in subsections 5.6(c)(i)-(iv) for each Settlement Period are collectively the responsibility of the Seller ("Net Seller CAISO Settlements"). Positive Net Seller CAISO Settlements will be added as a charge on the monthly invoice and negative Net Seller CAISO Settlements will be credited to Buyer on the monthly invoice.
  - (vi) Buyer shall retain all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility, other than Net Seller CAISO Settlements.
  - (vi) Exhibit K sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 5.6(c). Following the Execution Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "Net Seller CAISO Settlements Protocol") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 5.6(c). In the event that the Charge Codes agreed to by the Parties in the Net Seller CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, the Party who is the SC at the time that Charge Codes are amended, deleted, or added shall promptly notify the other Party and the Parties shall mutually agree upon adjustments to the Net Seller CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 5.6(e).
- (d) Variable or Intermittent Energy Resource Programs. During the Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Seller's sole cost, as described in Section 5.6(e)(i)(D), and discretion to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.
- (e) Forecasts. Seller shall use generally accepted industry standards to produce the forecasts described hereunder. 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 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 Day-Ahead Seller 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. No later than five (5) Business Days prior to any change to the Planned Outage schedule for such Contract Year, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year. During the Delivery Term of this Agreement, Seller shall not schedule Planned Outages of more than twenty-four (24) hours during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes at Buyer's discretion in order to conform to the CAISO's Availability Assessment procedures).
- (ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller shall provide an electronic update, in a format specified by Buyer, 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, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, 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, or such other time designated by Buyer as necessary to meet its obligations to the CAISO as SC for the Facility, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("Day-Ahead Seller Forecast"). The Day-Ahead Seller Forecast shall include hourly available capacity and generation and all Planned Outages.
- (j) Planned Outages. If Buyer requests a change to the scheduled date of any Planned Outage, Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer's request.

- (k) Forced Outages. Forced Outages shall be reported by Seller to Buyer verbally as soon as practicable and in writing no later than such time as is necessary for Buyer to meet its obligations to the CAISO as Scheduling Coordinator for the Facility. Written notice of a Forced Outage lasting longer than one (1) hour shall include the type of outage, start date and start time of outage, estimated or actual end date and end time of the outage, a text description of the cause of the outage and any other information the Seller deems necessary for the Buyer to understand the causes and impact of the outage. Seller shall notify Buyer as soon as practicable, and no later than such time as is necessary for Buyer to meet its obligations to the CAISO as Scheduling Coordinator for the Facility, whenever the Facility is returned to service.
- (l) Curtailement.
  - (i) **Mandatory Curtailement Periods.** Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailement Order. Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailement Order.