

ARP-LOYALTON BIOMASS PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

THE CITY OF RIVERSIDE, CALIFORNIA

Dated as of November 16, 2017

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ARP-LOYALTON BIOMASS PROJECT

POWER SALES AGREEMENT

1. **PARTIES.** This ARP-Loyalton Biomass Project Power Sales Agreement (this “Agreement”), is dated for convenience as of the 16th day of November, 2017, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” and the CITY OF RIVERSIDE, CALIFORNIA, a municipal corporation organized and existing under the laws of the State of California. The City of Riverside is also periodically designated in this Agreement as “Riverside” or as “Purchaser”, or, depending upon the context as “SCPPA Participating Member.” Riverside and SCPPA are also sometimes herein referred to individually as a “Party” and together as the “Parties.”

2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts that follow are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to “Sections” and “Appendices” shall be to Sections and Appendices, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts, among others:
 - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act” as defined in Appendix A), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term and reliable supplies of renewable electric energy.

- 2.2 Pursuant to the terms of the Act, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, manage, operate, maintain and administer projects involving systems, methodologies and programs for the acquisition, supply procurement and delivery of secure, long-term reliable supplies of renewable electric energy and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, undertaken, constructed, managed, operated, maintained and administered and to provide by agreement for the performance and carrying out of any such activities.
- 2.3 Riverside is a California municipality which provides electric energy to its citizens through its municipally owned electric system. Riverside is one of the parties to the SCPPA Joint Powers Agreement.
- 2.4 In response to the mandate imposed on them by the State of California in 2016 by passage of Senate Bill 859 (Stats. 2016, c. 368, eff. Sept. 14, 2016, hereinafter "SB 859") to procure a specified amount of electric generation capacity from biomass-fueled resources, Riverside, together with the City of Anaheim, Imperial Irrigation District, and LADWP, (with Riverside, the "SCPPA Participating Members") and other publicly-owned utilities subject to the SB 859 mandate, have identified a potential biomass generation resource owned and operated by ARP-Loyalton Biomass, LLC. Such biomass resource is denominated as the ARP-Loyalton Biomass Project ("the Project") and is owned and operated by ARP-Loyalton Biomass, LLC, a California limited liability company and an affiliate of American Renewable Power, LLC.
- 2.5 After negotiations SCPPA, together with the Sacramento Municipal Utility District ("SMUD"), the Modesto Irrigation District ("MID"), and the Turlock Irrigation District ("TID"), is entering into a Power Purchase Agreement with ARP-Loyalton Cogen LLC for the purchase of capacity, electric output and associated environmental attributes of the Project.
- 2.6 SCPPA, SMUD, MID and TID are also entering into the Buyers Joint Project Agreement, a copy of which is attached hereto as Appendix D, providing for the coordination of the exercise of certain of their rights and activities with respect to the Project and authorizing SCPPA as Buyers' Agent to take certain actions on their behalf under the Power Purchase Agreement.
- 2.7 Purchaser has a need for the capacity, electric output and associated rights, benefits and credits of the Project which comply with environmental and energy procurement laws, and has determined to enter into this Power Sales Agreement with SCPPA to purchase from SCPPA capacity, electric output and associated rights, benefits and credits of the Project.

3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for Purchaser's share of SCPPA's costs with respect to the Project, the Parties agree as herein set forth.
4. **DEFINITIONS.** Appendix A to this Agreement, attached hereto and incorporated herein, sets forth definitions of certain terms used in this Agreement. The terms defined in Appendix A and this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:
- 4.1 Agreement. "Agreement" means this Agreement, which includes the Appendices attached hereto, as it may be amended, modified or supplemented from time to time.
- 4.2 Effective Date. "Effective Date" means the date described in Section 15.1 hereof.
- 4.3 SCPPA Percentage of Facility Output. "SCPPA Percentage of Facility Output" means the Buyers' Percentage of Facility Output (as defined in the Power Purchase Agreement) allocated to SCPPA under the Power Purchase Agreement, attached hereto as Appendix C.
- 4.4 Total Power Costs. "Total Power Costs" mean all of SCPPA's costs resulting from SCPPA's contracting for, providing for, accommodating, and facilitating the Project, including costs arising under any of the Power Purchase Agreement or other Project Agreements associated with SCPPA percentage of Facility Output . SCPPA shall apply, as a credit against Total Power Costs, any receipts, revenues and other moneys received by SCPPA from surplus equipment, materials, supplies or assets relating to the Project sold prior to the date of Commercial Operation for the benefit of SCPPA, as well as such other amounts to be applied as a credit against Total Power Costs pursuant to this Agreement. Total Power Costs shall consist of (i) the Delivery Output cost component (described in Section 4.4.1), (ii) the Power Purchase Agreement General and Administrative cost component (described in Section 4.4.2), (iii) a Supplementary Services cost component to the extent SCPPA incurs such costs (described in Section 4.4.3), (iv) a Reserve Fund cost component (described in Section 4.4.4), and (v) a Power Purchase Agreement cost component (described in Section 4.4.5), and shall include the items of cost and expense referred to in the Power Purchase Agreement and this Section 4.4 that are accrued or paid by SCPPA during each Month of each Power Supply Year. In the event any Power Supply Year shall consist of fewer than twelve Months, the fraction set forth in Section 4.4.2 shall be adjusted accordingly and, in the event of any revision of the Annual Budget after the commencement of any Power Supply Year, the amount determined pursuant to Section 4.4.2 shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to Section 4.4.2 shall be evenly apportioned over the remaining Months of such Power Supply Year, excluding any cost associated with SCPPA acting as Buyers Agent for other Buyers.

- 4.4.1 The Delivery Output cost component of Total Power Costs for each Month shall consist of the costs of the SCPPA's Percentage of Facility Output, as calculated at the applicable Contract Price therefor in the Power Purchase Agreement.
- 4.4.2 The Power Purchase Agreement General and Administrative cost component of Total Power Costs for each Month shall consist of the administrative and general costs with respect to SCPPA's Percentage of Facility Output, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to SCPPA's Percentage of Facility Output, (ii) all expenses incurred in enforcing the Power Purchase Agreement and the Project Agreements, any applicable associated ancillary costs under the Power Purchase Agreement, and any costs SCPPA is required to pay with respect to the Facility Output; (iii) all costs related to the conducting of the business of SCPPA with respect to SCPPA's Percentage of Facility Output, including the applicable portion of salaries, fees for legal, engineering, financial and other services, and costs of the Project Manager, and shall include all costs incurred by SCPPA, as a Buyer, under the Buyers Joint Project Agreement (exclusive, however of costs of SCPPA as Buyers' Agent that are paid under the Buyers Joint Project Agreement), as well as all other costs attributable to miscellaneous and incidental expenses in connection with the administration of SCPPA's Percentage of Facility Output, and all other expenses properly related to the conduct of such affairs by SCPPA.
- 4.4.3 The Supplementary Services cost component of Total Power Costs shall consist of all monthly costs incurred by SCPPA, if any, and to the extent not included in Section 4.4.1, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging or delivery and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for SCPPA's Percentage of Facility Output provided for under this Agreement. The Supplementary Services cost component of the Total Power Costs shall also include all monthly costs incurred by SCPPA, if any, that are necessary to move or otherwise handle delivery of any portion of Facility Output from the Point of Delivery to one or more specified delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.5 and by other SCPPA Participating Members pursuant to the terms of their respective power sales agreement relating to the Project. Absent a request by Purchaser for SCPPA to provide Supplementary Services during a Month, no Supplementary Services cost component shall be included in Purchaser's Total Power Costs for such Month.

4.4.4 The Reserve Fund cost component of Total Power Costs for a Month shall consist of the amount for such Month necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Board of Directors.

4.5 Monthly Costs. "Monthly Costs" mean the costs payable by the Purchaser to SCPPA as described in Section 7.1 hereof.

5. PURCHASE AND SALE OF FACILITY OUTPUT AND THE OBLIGATIONS OF SCPPA AND THE PURCHASER.

5.1 Purchase and Sale of SCPPA Participant Entitlement Share. In accordance with the terms and conditions of this Agreement, commencing on the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the effective date of the Power Purchase Agreement, or (iii) the date of the first delivery of energy to Purchaser pursuant to this Agreement, and continuing through the term of this Agreement, except as otherwise provided herein, SCPPA shall provide Purchaser its SCPPA Participant Entitlement Share of any and all products, rights, and benefits, whether tangible or intangible received or obtained by SCPPA with respect to the Project, including without limitation the Environmental Attributes and Facility Output, and Purchaser shall be responsible for and pay its SCPPA Participant Entitlement Share of any and all costs, liabilities and obligations associated with the acquisition by SCPPA of such products, rights, and benefits, which shall include all costs, liabilities and obligations associated with Facility Output under the Power Purchase Agreement and any other applicable Project Agreement, including purchase or acquisition of any rights pursuant to the Power Purchase Agreement and any other applicable Project Agreement.

5.2 Facility Output and Deliverables. SCPPA shall provide and Purchaser shall purchase and receive Purchaser's SCPPA Participant Entitlement Share of Facility Output pursuant to the terms of this Agreement. To the extent permitted by the Power Purchase Agreement, the applicable Project Agreements, or otherwise determined by the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be necessary or desirable for the utilization, maintenance or preservation of the rights and interests of the SCPPA Participating Members with respect to the Project including, if appropriate, such enforcement actions or other measures as the Board of Directors deems to be in the Purchaser's best interests. To the extent such services are available and can be carried forth in accordance with the Power Purchase Agreement or other applicable Project Agreements, SCPPA shall also provide such other services, as approved by the Board of Directors, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the Power Purchase Agreement or other applicable Project Agreements. SCPPA shall use its best efforts, on behalf of the SCPPA Participating Members, to secure the benefits of the transactions contemplated under the Power Purchase Agreement or other applicable Project Agreements including the delivery of the Facility Output

contemplated by this Agreement, and shall endeavor to maintain and secure the rights and benefits accruing to SCPPA through the Power Purchase Agreement and the other applicable Project Agreements. SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Agreement, as agent for Purchaser to fully carry forth Purchaser's objectives in the Project as set forth herein.

5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager as provided in this Agreement to administer the Project, or cause the Project to be administered, as provided in this Agreement or pursuant to assignments, instructions or requests by the Coordinating Committee or the Board of Directors, or through any project management or agency agreement, or contracts for services between SCPPA and a third party.

5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1 or 5.4.2, respectively.

5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least 60 Days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget for such Power Supply Year as prepared by the Project Manager and approved by the Board of Directors. Purchaser may then submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the Annual Budget. SCPPA shall adopt the Annual Budget not less than thirty (30) nor more than sixty (60) Days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to the Purchaser; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available prior to Commercial Operation of the Facility. As required from time to time during any Power Supply Year after seven Days written notice to the Purchaser, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year. The Annual Budget shall establish the basis for monthly Billing Statements to be sent to each SCPPA Participating Member, as provided in Section 7 hereof.

5.4.2 Any adjustment, and any other or further mechanism for adjustment, as may be required to address the variability of costs of operation of the Project at any time during the Power Supply Year or the variability of or addition to any other Annual Budget component, may be incorporated into the Annual Budget as provided above, or any amendment to an Annual Budget may be made at any time during any Power Supply Year, upon the seven Days written notice to the Purchaser as set forth in Section 5.4.1.

- 5.5 Reports. SCPPA will prepare and issue to Purchaser the following reports as soon as reasonably practicable after the end of each calendar quarter in a Power Supply Year:
- 5.5.1 Financial and operating statement relating to the Project.
 - 5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.
- 5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit by Purchaser. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.
- 5.7 Provide Information. Purchaser agrees to supply SCPPA, upon written request and being provided a reasonable amount of time to respond, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the administration and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.
- 5.8 Consultants and Advisors Available. SCPPA shall make available to the Project Manager, all consultants and advisors that are retained by SCPPA, and such consultants and advisors shall be authorized to consult with and advise the Project Manager on Project matters.
- 5.9 Liquidated Damages. Any amounts paid to SCPPA as and for Daily Delay Damages by the Power Purchase Provider as provided under the Power Purchase Agreement shall be remitted to the SCPPA Participating Members in accordance with their respective SCPPA Participant Entitlement Shares.

6. COORDINATING COMMITTEE.

- 6.1 Establishment and Authorization of the Coordinating Committee.
- 6.1.1 The Coordinating Committee is hereby established and duly authorized to act on behalf of the SCPPA Participating Members as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the SCPPA Participating Members and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) making any recommendations to the Board of Directors regarding the

administration of the Project and any acquisitions related thereto and (v) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration thereof, and such further developments as may need to be addressed; provided that the above purposes of the Coordinating Committee shall be authorized only to the extent such purposes are not within the responsibilities of the Buyers Joint Project Committee as provided under the Buyers Joint Project Agreement.

- 6.1.2 The Coordinating Committee shall consist of one representative designated by each of the SCPPA Participating Members. Each SCPPA Participating Member shall be entitled to cast a vote equal to its SCPPA Participant Entitlement Share as set forth in Appendix B hereof. An alternate representative of each SCPPA Participating Member shall be its alternate Joint Committee Representative or, if none has been appointed, an alternate representative may be appointed by written notice by such SCPPA Participating Member to SCPPA and each of the other SCPPA Participating Members to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee, in the absence of such SCPPA Participating Member's regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. SCPPA shall be responsible for calling and presiding over meetings of the Coordinating Committee.
- 6.1.3 No SCPPA Participating Member's representative shall exercise any greater authority than permitted for the SCPPA Participating Member which she/he represents.
- 6.1.4 SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law.
- 6.1.5 For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representatives of at least a majority of the SCPPA Participating Members are present.
- 6.1.6 Except as may otherwise be provided in an agreement to which all of the SCPPA Participating Members agree, all actions taken by the Coordinating Committee shall require an affirmative vote of SCPPA Participating Members having SCPPA Participant Entitlement Shares aggregating at least eighty percent (80%) of the total SCPPA Participant Entitlement Shares. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project

taken by the SCPPA Board of Directors shall require an affirmative vote of at least eighty percent (80%) of the Project Votes (as defined in SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of another SCPPA Participating Member and Purchaser determines, in good faith, that such proposed action will not adversely affect Purchaser, economically or otherwise, then Purchaser agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action.

6.1.7 Purchaser acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Purchaser in connection with any such Project Agreement or supplement or amendment, provided that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement.

6.1.8 Conducting of Coordinating Committee meetings and actions taken by the Coordinating Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, telegraph, telex, letter, e-mail or by any combination thereof, to the extent permitted by law.

6.2 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 and to the extent not within the responsibilities of the Buyers Joint Project Committee as provided under the Buyers Joint Project Agreement, the Coordinating Committee shall have the following responsibilities:

6.2.1 Provide liaison between SCPPA and the SCPPA Participating Members at the management or other levels with respect to the ongoing administration of the Project and maintain a liaison between the SCPPA Participating Members and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.

6.2.2 Exercise general supervision over any subcommittee established pursuant to Section 6.5.

- 6.2.3 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager at the request of the Coordinating Committee or pursuant to any applicable agreement.
- 6.2.4 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.5 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.6 Review, discuss and attempt to resolve any disputes among the SCPPA Participating Members or the parties to any Project Agreements including, without limitation, the Power Purchase Provider, the counterparties under the Power Purchase Agreement or any other counterparty with respect to any Project Agreement.
- 6.2.7 Make recommendations to the Project Manager, the SCPPA Participating Members, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the ongoing administration of the Project.
- 6.2.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the scheduling, handling, tagging, dispatching and crediting of SCPPA's Percentage of Facility Output and the handling and crediting of Environmental Attributes associated with SCPPA's Percentage of Facility Output.
- 6.2.9 Review, and, if appropriate, modify, approve or otherwise act upon the form or content of any written statistical, administrative, or operational reports, biomass energy related data, electric generation information, biomass energy production data, and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, exchanging, balancing, movement, or other delivery information, climate and weather related matters, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager as requested by the Coordinating Committee, or by the counterparties to Project Agreements, experts, consultants or others.
- 6.2.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager as

requested by the Coordinating Committee or, if applicable, the counterparty to any Project Agreement, to be followed by the SCPPA Participating Members for, among other things, the production, scheduling, tagging, transmission, delivery, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of SCPPA's Percentage of Facility Output. For avoidance of doubt, upon SCPPA's delivery and sale of Facility Output to Purchaser at the Point of Delivery, Purchaser shall have full unilateral rights to remarket, sell or otherwise dispose of such Facility Output.

- 6.2.11 Review, modify and approve, if appropriate, any activities with respect to the performance of any Project Agreement, including policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In approving such activities, consideration may be given, if possible, to each SCPPA Participating Member's electric system conditions, which may prevail during such planned activities.
- 6.2.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.2.13 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager, as requested by the Coordinating Committee, or by any counterparty to any Project Agreements giving due recognition to the needs, rights and electric system requirements and capabilities of all SCPPA Participating Members.
- 6.2.14 Review and act upon any matters involving the Power Purchase Agreement and any other Project Agreement, any guarantee or letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.
- 6.2.15 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.16 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the SCPPA Percentage of Facility Output to the Point of Delivery of from any of the Point of Delivery to other points or destinations, as applicable.

- 6.2.17 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions of transmission.
 - 6.2.18 Review, modify and where appropriate, recommend or approve the implementation of practices and procedures to carry forth the provisions of Section 9 herein, as may be applicable with respect to any of the SCPPA Participating Members, provided that the Coordinating Committee shall take no action with respect to the possible provision of Supplementary Services unless and until a SCPPA Participating Member makes a specific request that SCPPA provide such Supplementary Services.
 - 6.2.19 Review and approve adjustments to the SCPPA Participant Entitlement Shares, and associated SCPPA capacity amounts set forth in Appendix B when and as required by this Agreement; provided, that such action shall require the affirmative vote of Purchaser's representative if such adjustment would change Purchaser's SCPPA Participant Entitlement Share, and the associated SCPPA capacity amounts.
 - 6.2.20 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement or any other applicable Project Agreement or as may otherwise be appropriate or beneficial to the Project or the SCPPA Participating Members.
- 6.3 Management Decisions and the Role of Board of Directors. To the extent not provided for under the Buyers Joint Project Agreement, the rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Purchaser shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests with respect to the Project as provided in this Section 6.3. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:
- 6.3.1 Future Matters Liaison. The Board of Directors shall provide liaison between the SCPPA Participating Members at the management level with respect to the administration of the Project and other future matters arising out of the Project Agreements.
 - 6.3.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the SCPPA Participating Members and the counterparties under the Project Agreements relating to the Project Agreements.
 - 6.3.3 Scheduling Procedures. When recommended by the Project Manager, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be

followed by the SCPPA Participating Members for scheduling, delivering, controlling and allocating the SCPPA Percentage of Facility Output.

- 6.3.4 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
 - 6.3.5 Project Agreements. The Board of Directors shall have the authority to approve any future Project Agreements, including agreements for scheduling coordinator services, and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
 - 6.3.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.
 - 6.3.7 Application of Certain Payments Under the Power Purchase Agreement. The Board of Directors shall review, modify and approve recommendations of the Project Manager as to the application of any payments or amounts received by SCPPA from the Performance Security or as a result of Default by the Power Purchase Provider under the Power Purchase Agreement; provided that such payments and amounts shall be applied to one or more of the purposes set forth in Section 4.4 to the credit of Purchaser and the other SCPPA Member Participants in proportion to their respective SCPPA Member Entitlement Share.
 - 6.3.8 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Manager, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Periodic Audits. The Board of Directors or the Coordinating Committee may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager (if other than SCPPA), the Power Purchase Provider (to the extent provided under the Power Purchase Agreement) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable consultant or cost reimbursable contractor relevant to the administration of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to Purchaser copies of all audits. No more frequently than once every calendar year, the Purchaser may, at its sole cost and expense, audit or cause

to be audited the books and cost records of SCPPA, the Project Manager (if other than SCPPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant or cost reimbursable contractor relevant to the administration of the Project.

- 6.5 Additional Committees. The Board of Directors may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, diurnal, barometric, meteorologic, operating, insurance, community relations, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Board of Directors; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements. Each subcommittee shall be initially responsible to the Coordinating Committee.
- 6.6 Written Record. All actions, resolutions, determinations and reports made by the Coordinating Committee as required by this Agreement shall be set forth in a written record or its minutes.
- 6.7 Change in Representative. Purchaser shall promptly give written notice to the other SCPPA Participating Member and SCPPA of any changes in the designation of its representative on the Coordinating Committee or any subcommittee, and SCPPA shall promptly give written notice to Purchaser and the other SCPPA Participating Member of any changes in the designation of its representative on the Coordinating Committee or any subcommittee.
- 6.8 Costs of Consultants. Costs (or the applicable portion thereof) of consultants and others employed or appointed by the Board of Directors to perform the duties required hereunder shall be included in Total Power Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).
- 6.9 Representative's Expenses. Any expenses incurred by any representative of any SCPPA Participating Member or group of SCPPA Participating Members serving on the Coordinating Committee or any other committee in connection with his/her duties on such committee shall be the responsibility of the SCPPA Participating Member which he/she represents and shall not be an expense payable under this Agreement.
- 6.10 Inaction by Committee. It is recognized by SCPPA and the SCPPA Participating Members that if the Coordinating Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in any other applicable Project Agreement, then SCPPA may take such action as in its discretion is necessary for its timely performance under any Project Agreement pending the resolution of any such inability or failure to agree, but

nothing herein shall be construed to allow SCPPA to act in violation of the express terms of any Project Agreement.

- 6.11 Compliance with the Power Purchase Agreement. It is further recognized by SCPPA and the SCPPA Participating Members that notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee, or the Project Manager shall require or authorize SCPPA to act in any manner inconsistent with requirements of the Power Purchase Agreement or to refrain from acting in a manner required by the Power Purchase Agreement.
- 6.12 Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical and other matters which may arise from time to time in connection with administration of the Project Agreements, in appropriate cases, duties and responsibilities of the Board of Directors or the Coordinating Committee, as the case may be under this Section 6, may be delegated to SCPPA's Executive Director by the Board of Directors upon notice to the SCPPA Participating Members.

7. CHARGES AND BILLINGS.

- 7.1 Monthly Costs. The amount of Monthly Costs which shall be paid by Purchaser for a particular Month shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 12 hereof:
- 7.1.1 Purchaser's SCPPA Participant Entitlement Share multiplied by the Delivery Output cost component of Total Power Costs (as provided in Section 4.4.1) for such Month.
 - 7.1.2 Purchaser's SCPPA Participant Entitlement Share multiplied by the Power Purchase Agreement General and Administrative cost component of Total Power Costs (as provided in Section 4.4.2 hereof) for such Month.
 - 7.1.3 Purchaser's SCPPA Participant Entitlement Share multiplied by the Reserve Fund cost component of Total Power Costs (as provided in Section 4.4.4 hereof) for such Month.
 - 7.1.4 Purchaser's share of the Supplementary Services cost component of Total Power Costs (as provided in Section 4.4.3 hereof) based on Purchaser's allocated share of any such services procured by SCPPA on behalf of the Purchaser for such Month.
- 7.2 Billing Statement. By the fifth Day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the

provisions of this Agreement; provided, however, that such Billing Statement, with respect to the cost of Facility Output provided by SCPPA to Purchaser under this Agreement, shall also include with respect to the performance by SCPPA or the counterparty under and pursuant to applicable Project Agreements, any charge or credit to Purchaser with respect to the costs or revenues attributable to Purchaser pursuant to and under any applicable Project Agreement. Such Billing Statement shall detail the costs described in Section 7.1 hereof and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in Section 7.1, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before twenty (20) Days after receipt of such Billing Statement.

- 7.3 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each SCPPA Participating Member's Billing Statement with respect to the Monthly Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.4 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth Day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within thirty (30) Days following receipt of written notification by Purchaser of such dispute.
- 7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, or more frequently if so determined by the Board of Directors, SCPPA will submit to Purchaser and each of the other SCPPA Participating Members a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 5.6. If, on the basis of the statement submitted as provided in this Section 7.5, the actual aggregate Monthly Costs and other amounts payable by the Purchaser for any Power Supply Year exceed the amount

thereof which Purchaser has been billed, Purchaser shall pay SCPPA, within twenty (20) Days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.5, the actual aggregate Monthly Costs or other amounts payable by the Purchaser for any Power Supply Year are less than the amount therefor which Purchaser has been billed, SCPPA shall, unless otherwise directed by Purchaser or other SCPPA Participating Member with respect to moneys owed to it, credit such excess against Purchaser's and other SCPPA Participating Members' next monthly Billing Statement.

- 7.6 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 7.7 Interest on Late Payments. If Purchaser fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the lesser of (i) one percent per Month (12% per annum) on the unpaid amount of the bill or (ii) the monthly equivalent of the "prime" rate of interest as noticed in the Federal Reserve's HR 15 weekly bulletin (or the subsequent equivalent thereof) as of the date of nonpayment on the unpaid amount of the bill, until such Billing Statement is paid.
- 7.8 Prepayment of Monthly Costs. Purchaser may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Purchaser with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Purchaser and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Purchaser to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Purchaser's other obligations under this Agreement.
- 7.9 Costs or Expenses Incurred for Sole Benefit of Purchaser. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Purchaser, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Purchaser, in which event only Purchaser (and no other SCPPA Participating Member) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Purchaser shall be deemed to be paid from amounts paid by Purchaser for the payment of its Billing Statements.

7.10 Credit or other Payment Attributable to a Specific SCPPA Participating Member. Should any SCPPA Participating Member make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable SCPPA Participating Member under such SCPPA Participating Member's Power Sales Agreement. Such a credit may, at the request of the applicable SCPPA Participating Member, be credited on SCPPA Participating Member's subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the SCPPA Participating Member's project stabilization account or such a credit may be otherwise handled in such manner as the applicable SCPPA Participating Member may reasonably request. The provisions of this Section 7.10 shall be in addition to the terms and provisions of Section 12 and shall not be applicable to any circumstances, conditions or matters that are within the scope of Section 12.

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

8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date of Commercial Operation of the Facility, or (iii) the date of the first delivery of Facility Output to Purchaser and continuing through the term of this Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof whether or not this Agreement has been terminated, or the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

8.2 Source of Payments. The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system sufficient to satisfy all the payments required to be made in such year under

this Agreement until all payments required under this Agreement have been paid in full.

- 8.3 Rate Covenant. Purchaser will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement except for such as have been obtained.

9. OTHER TERMS AND SERVICES.

- 9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of the Energy of Purchaser's SCPPA Participant Entitlement Share to be delivered under this Agreement. The SCPPA Percentage of Facility Output generated and produced from the Project shall be scheduled and delivered to Purchaser at the Point of Delivery under the practices and procedures approved pursuant to Sections 6.2 and 6.3, as applicable.
- 9.2 Other Services and Transmission From Point of Delivery. It is the obligation of Purchaser to receive its SCPPA Participant Entitlement Share and to arrange for delivery of such Facility Output to its ultimate destination or destinations after having reached the Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, firming, shaping, swaps, exchanges or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of such Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser.
- 9.3 Energy Services. Except as otherwise provided in this Agreement, nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, firming, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not materially affect any of the obligations of Purchaser under this Agreement.

- 9.4 Transfer of Environmental Attributes to Purchasers. SCPPA shall transfer or pass through all Environmental Attributes received by SCPPA under the Power Purchase Agreement to SCPPA Participating Members in the same manner by which SCPPA receives Environmental Attributes.

10. PROJECT SPECIFIC MATTERS AND PURCHASER'S RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.

- 10.1 Rights and Obligations under the Project Agreements. Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to deliver to Purchaser its SCPPA Participant Entitlement Share during the Delivery Term of the Power Purchase Agreement is limited to the SCPPA Percentage of Facility Output which SCPPA receives from the Power Purchase Provider for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by SCPPA Participating Members as provided in this Agreement; and (iv) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of Energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or Environmental Attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred pursuant to Section 12.2 of this Agreement.
- 10.2 Revision of Appendix B. The Parties agree that adjustments of the SCPPA Participant Entitlement Shares in Appendix B in compliance with this Agreement shall be made and treated as an element of administration and not an amendment of this Agreement. The revised Appendix B shall become Appendix B to this Agreement in replacement of the prior Appendix B hereof.

11. NONPERFORMANCE AND PAYMENT DEFAULT.

- 11.1 Nonperformance by Purchaser. If Purchaser fails to perform any covenant, agreement or obligation under this Agreement or causes SCPPA to be in default with respect to any undertaking entered into for the Project or to be in

default under the Power Purchase Agreement, or any other Project Agreement, as applicable, or causes a default to occur pursuant to such agreements, SCPPA may, in the event the performance of any such obligation remains unsatisfied after thirty (30) Days' prior written notice thereof to the Purchaser and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.

- 11.2 Notice of Payment Default. On or promptly following the Initial Payment Default Date by Purchaser, SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement and has assumed the status of a Defaulting Purchaser and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 11.4 and 11.5 of this Agreement. Notice of such Payment Default shall be provided promptly by SCPPA to the other SCPPA Participating Members. In addition to the foregoing the notice of Payment Default shall specify that five (5) Days after the issuance of the written notice of Payment Default by SCPPA, deliveries of Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously carry forth the provisions of this Section 11.
- 11.3 Cured Payment Default. If after a Payment Default, Purchaser cures such Payment Default within thirty (30) Days (the Cure Period), its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 11.4 and 11.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.
- 11.4 Failure to Cure Payment Default. If at any time thirty (30) Days after an uncured Payment Default by Purchaser, Purchaser fails to be in Compliance, Purchaser's Project Rights shall immediately be discontinued and terminated; provided, however, the Defaulting Purchaser's obligation to make payments under this Agreement shall not be eliminated or reduced except to the extent provided in Section 11.5. SCPPA shall provide to the Defaulting Purchaser a separate monthly invoice of any such payment obligations under this Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other SCPPA Participating Members and such others as SCPPA deems appropriate, of such discontinuance and termination of the Defaulting Purchaser's Project Rights.
- 11.5 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Purchaser's Project Rights pursuant to Section 11.4, Defaulting Purchaser's obligation to make payments under this Agreement (notwithstanding anything to the contrary in this Agreement) shall not be

eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of Defaulting Purchaser's Project Rights and Obligations, provided, however, such payment obligations for Defaulting Purchaser may be eliminated or reduced to the extent permitted by law, if and to the extent any costs incurred by SCPPA have been fully paid, and the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.

- 11.6 Use of Reserve Fund. With respect to a Payment Default by Purchaser, funds in the reserve fund account, if any, held by SCPPA may be used, to the extent necessary and to the extent available, to cover any deficiency with respect to any payment due by SCPPA attributable to Purchaser's participation in the Project.

12. CHARACTER, CONTINUITY OF SERVICE.

- 12.1 Outages, Interruptions and Curtailment of Energy Deliveries. The Power Purchase Provider or other counterparty may under certain conditions set forth in the applicable provisions of a Project Agreement or other applicable operating agreement, interrupt or curtail deliveries of Facility Output to Purchaser under prescribed circumstances pursuant to the applicable provisions of a Project Agreement or other applicable operating agreement. Should such an interruption or curtailment occur Purchaser shall be credited with such revenues as are credited or paid to SCPPA on Purchaser's behalf and shall be obligated to pay any costs incurred by SCPPA attributable to Purchaser which are payable by SCPPA pursuant to the Power Purchase Agreement or any other applicable Project Agreement. SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise Purchaser of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.

- 12.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide, Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable the Power Purchase Provider to acquire, administer or operate the Project; provided, however, that Purchaser shall not thereby be relieved of its obligations to make payments under this Agreement except to the extent SCPPA is so relieved pursuant to the Project Agreements.

13. LIABILITY.

- 13.1 Participating Members' Obligations Several. Purchaser and each of the other SCPPA Participating Members shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Purchaser to make

payments under this Agreement is a several obligation and not a joint obligation with those of the other SCPPA Participating Members under the other Power Sales Agreements to which such SCPPA Participating Members are parties.

- 13.2 No Liability of SCPPA or Purchaser, or Their Directors, Officers, Employees, Etc.: SCPPA's and Purchaser's and Project Manager's (within its capacity as Project Manager) Directors, Officers, Employees Not Individually Liable. Both Parties agree that neither SCPPA, the Purchaser, the Project Manager, nor any of their respective past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the municipal entity of which the Purchaser is a part (collectively the "Released Parties") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise suffered by any of the Released Parties as a result of the performance or non-performance by the Power Purchase Provider or any of the Released Parties under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Each Party releases the Released Parties from any claim or liability that either Party may have cause to assert as a result of any actions or inactions of the Released Parties under this Agreement or the performance or non-performance by the Project Manager under this Agreement or any Project Agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order).

No such performance or non-performance by the Project Manager, the Power Purchase Provider, or SCPPA shall relieve SCPPA or Purchaser from their respective obligations under this Agreement, including, without limitation, Purchaser's obligation to make payments required under Section 8.1 or any other provision of this Agreement and SCPPA's obligation to make payments under Section 13.8 or any other provision of this Agreement, or under any other Project Agreements. The provisions of this Section 13.2 shall not be construed so as to relieve the Project Manager or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement or any other Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, SCPPA, the Project Manager or the Purchaser, nor any of their respective past, present or future directors, officers, board members, agents, attorneys, advisors, employees or employees of the governmental entity of which the agent is a part or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by any of the Released Parties under this Agreement or any Project Agreement. Nothing in this Section 13.2 or in any other provision of this Agreement shall affect Purchaser's or SCPPA's obligation under this Agreement, including without limitation, Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement and SCPPA's obligation to make

payments under Section 13.8 or any other provision of this Agreement, or under any other Project Agreements.

- 13.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, either Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of the other Party and shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other direct monetary damages owed by either a Purchaser, SCPPA or the Project Manager (within its capacity as Project Manager) as the case may be, including, without limitation, any costs payable to SCPPA and any costs payable to the Purchaser or the Project Manager.
- 13.4 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 13.2 and 13.3 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 13.5 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 13, the provisions of this Section 13 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy provided under the Project Agreements.
- 13.6 No General Liability of SCPPA. The Parties agree that the undertakings under this Agreement by SCPPA, or the Project Manager (within its capacity as Project Manager), shall never constitute a debt or indebtedness of SCPPA or the Project Manager (within its capacity as Project Manager) within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.
- 13.7 Indemnification of Purchaser. SCPPA undertakes and agrees, to the extent permitted by law, to indemnify and hold harmless Purchaser, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the agent is a part, past, present or future (collectively, "Purchaser Indemnitees"), from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Purchaser, SCPPA or third persons) (collectively, "Losses") which may be imposed on, incurred by or asserted against Purchaser arising by manner of any breach of this Agreement by SCPPA, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of SCPPA or any of SCPPA's directors, board members, officers, employees, agents and advisors, past, present or future. At Purchaser's option, SCPPA shall defend Purchaser Indemnitees from and against any

and all Losses. If SCPPA, in response to Purchaser's request, defends any Purchaser Indemnitee, Purchaser shall approve the selection of counsel, and Purchaser shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Nothing in this Section 13.7 or in any other provision of this Agreement shall affect Purchaser's obligation to make any payment in accordance with Section 8.1 of this Agreement or to pay any other amounts or costs required to be paid by it under this Agreement.

13.8 Indemnification of Project Manager. The Parties acknowledge that SCPPA is obligated to indemnify any Project Manager (when acting within its capacity as the Project Manager), including as provided under any agency agreement to indemnify and hold harmless Project Manager, its board, officers, agents, attorneys, advisors, employees, and the employees of the governmental entity of which the agent is a part, past, present or future, when acting as Project Manager (collectively, the "Project Manager Indemnitees") from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of SCPPA or third persons) arising by reason of any actions, inactions, errors or omissions incident to the performance of the agency agreement (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order) on the part of Project Manager Indemnitees, when acting as Project Manager. It is further acknowledged by the Parties that all payments, costs and expenses of SCPPA with respect to compliance with any such indemnification obligations, including under any agency agreement, shall be payable as Monthly Costs by SCPPA Participating Members in accordance with the terms of their respective Power Sales Agreements. At Project Manager's option, SCPPA shall defend Project Manager Indemnitees from and against any and all Losses. If SCPPA, with Project Manager's consent, defends any Project Manager Indemnitee, Project Manager and Project Manager's City Attorney's Office (or other appropriate Project Manager counsel or authority, as appropriate) shall approve the selection of counsel, and Project Manager shall further approve any settlement or disposition, such approval not to be unreasonably withheld. Notwithstanding any provision of this Agreement which might be construed to the contrary, nothing in this Section 13.8 or in any other provision of this Agreement shall affect the obligations of any other SCPPA Participating Member under its Power Sales Agreement, to make any payment or to pay any cost required of it, or SCPPA's obligation to make any payment or to pay any cost required of it under any agency agreement.

13.9 Separate Capacities. The Parties acknowledge that any agent of SCPPA acting as Project Manager acts in a legal capacity that is separate from its capacity as a Purchaser, SCPPA Participating Member and a Party under this Agreement. Accordingly, for purposes of this Agreement, the rights, entitlements, obligations and liabilities of agent, as Purchaser, SCPPA Participating Member and a Party under this Agreement, shall not apply to or otherwise be affected by, and shall be legally separate from the rights, entitlements, obligations, and liabilities of agent in its

capacity as Project Manager under ant agency agreement.

14. RESTRICTIONS ON DISPOSITION.

- 14.1 Assignment. It is understood and agreed that each SCPPA Participating Member (including Purchaser) may sell, assign or otherwise dispose of some or all of its Project Rights and Obligations to other SCPPA Participating Members or SCPPA members under the same terms and conditions as set forth in this Agreement, provided that each such other SCPPA Participating Member or SCPPA member agrees in writing to be bound by the provisions of the Power Sales Agreement of the SCPPA Participating Member making such sale, assignment or other disposition. In the event of such a sale, assignment or other disposition, SCPPA shall revise Appendix B to reflect the new SCPPA Participant Entitlement Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.
- 14.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if the sale, assignment or other disposition is made pursuant to Section 14.1 of this Agreement, or if (i) such Assignee assumes and agrees in writing to fully perform and discharge the Project Rights and Obligations under its Power Sales Agreement, (ii) such Assignee has a corporate or long-term senior unsecured credit rating of A- or higher by S&P or A 3 or higher by Moody's, unless otherwise provided by the Board of Directors, and (iii) the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.
- 14.3 Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and such Acquiring Entity has a corporate or long-term senior unsecured credit rating not less than investment grade.
- 14.4 Successors and Assigns. Subject in all respects to Sections 11, 14 and 15 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Agreement.

15. EFFECTIVE DATE, TERM AND EXPIRATION.

- 15.1 Effective Date; Execution in Counterparts. This Agreement shall become effective on the first Day when each and all of the following shall have

occurred: (i) this Agreement shall have been duly executed and delivered by SCPPA and Purchaser, and (ii) the Power Purchase Agreement shall have been duly executed and delivered by SCPPA and the Power Purchase Provider. Once the Power Purchase Agreement has been executed and delivered as set forth above, SCPPA shall deliver a copy of the same to Purchaser. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.

- 15.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the conditions set forth in Section 15.1 and shall extend for the term specified in Section 15.3 unless earlier terminated pursuant to an express provision of this Agreement; provided, however, that any obligation to make payments by Purchaser or by SCPPA or any outstanding liability of Purchaser or SCPPA hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction carried forth under this Agreement, shall survive such termination.
- 15.3 Expiration. The term of this Agreement shall begin on the Day this Agreement becomes effective pursuant to Section 15.1 hereof. Unless terminated earlier pursuant to Section 16, the term of this Agreement shall expire on the date on which the Power Purchase Agreement is terminated and all obligation(s) of the parties under the Power Purchase Agreement have been fully satisfied or otherwise adequate provision for satisfaction of such obligation(s) have been made and no other such obligation(s) under the Power Purchase Agreement is outstanding; provided, however, that in no event, except as set forth in Section 15.4, shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.
- 15.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 15.3 hereof, this Agreement shall terminate on the date, if any, by which each and all of the following have occurred:
- 15.4.1 This Agreement is superseded as a result of Purchaser having (i) succeeded to SCPPA's rights through another agreement or agreements, or (ii) entered into a replacement power sales agreement or other agreement with SCPPA. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Facility; and
- 15.4.2 The Power Purchase Agreement shall no longer be of any force or effect.

15.5 Final Distribution of Reserve Fund. Following the expiration or earlier termination of this Agreement, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the SCPPA Participating Members under this Agreement and upon satisfaction of all remaining costs and obligations of SCPPA under this Agreement and in connection with the Facility, any amounts then remaining in the Reserve Fund shall be paid to the SCPPA Participating Member pro rata in accordance with their respective SCPPA Participant Entitlement Share .

16. **CONDITIONS TO TERMINATION OR AMENDMENT.** No power sales agreements which have been executed by SCPPA Participating Members for the Project may be terminated as to any SCPPA Participating Member, or be amended as to any SCPPA Participating Member so as to provide terms and conditions materially different from those contained therein, or subject to the provisions of the applicable power sales agreement of a SCPPA Participating Member for the Project, upon written notice to and written consent or waiver by the other SCPPA Participating Members, and upon similar amendment, if appropriate, being made to the power sales agreement of the other SCPPA Participating Members.
17. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.
18. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles, California, and shall be governed by, interpreted and enforced in accordance with the laws of the State of California. All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles, State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.
19. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Coordinating Committee or Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys' fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.
20. **PURCHASER'S CONTRACT ADMINISTRATOR.** Purchaser's contract administrator for this Agreement shall be the person so designated by the individual authorized to receive notices on behalf of Purchaser pursuant to Section 21 herein, and Purchaser's contract administrator shall have the authority to administer this Agreement on behalf of Purchaser. Notwithstanding the foregoing, Purchaser's contract

administrator shall have no authority to amend this Agreement on behalf of the Purchaser.

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

Southern California Public Power Authority
Attention: Executive Director
1160 Nicole Court
Glendora, CA 91740

City of Riverside
Attention: General Manager
Riverside Public Utilities
3900 Main Street
Riverside, CA 92522

- 22. AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on the date first written above.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Michael S. Webster, Executive Director

CITY OF RIVERSIDE, CALIFORNIA

By: _____

Attest: _____

APPROVED AS TO FORM:

BY: *Susan Wilson*
ASSISTANT CITY ATTORNEY

APPENDIX A

DEFINITIONS

The following terms, whether in the singular or the plural, and initially capitalized, shall have the meanings specified below:

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time.
2. Ancillary Documents. “Ancillary Documents” shall have the definition set forth in the Power Purchase Agreement.
3. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than thirty (30) Days nor more than sixty (60) Days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Power Costs under this Agreement and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
4. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by Purchaser in accordance with the provisions of Section 7 of this Agreement.
5. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
6. Buyers. “Buyers” shall mean SCPPA, the Sacramento Municipal Utility District, the Modesto Irrigation District and the Turlock Irrigation District.
7. Buyers’ Agent. “Buyers’ Agent” shall have the definition set forth in the Power Purchase Agreement.
8. Buyers Joint Project Agreement. The Buyers Joint Project Agreement by and among Southern California Public Power Authority, the Sacramento Municipal Utility District, the Modesto Irrigation District and the Turlock Irrigation District, dated as of October 19, 2017, attached hereto as Appendix D, as the same may be amended from time to time.
9. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts (“kW”) or megawatts (“MW”), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
10. Capacity Rights. “Capacity Rights” means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, to Capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility.

11. Commercial Operation. “Commercial Operation” shall have the definition set forth in the Power Purchase Agreement.
12. Compliance. Following a Payment Default, the Defaulting Purchaser shall be in compliance with its payment obligations under this Agreement if it (i) no later than the last Day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account or the other Reserve Fund as a result of any Payment Default.
13. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights or securing the obligations of the Power Purchase Provider under the Power Purchase Agreement.
14. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) Days thereafter.
15. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Purchaser is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
16. Daily Delay Damages. Daily Delay Damages shall have the definition set forth in the Power Purchase Agreement.
17. Day. “Day” means calendar Day unless otherwise specified herein.
18. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
19. Defaulting Purchaser. “Defaulting Purchaser” means Purchaser, where Purchaser has caused a Payment Default under Section 11.1 of this Agreement that has not been remedied or cured.
20. Defaulting SCPPA Participating Member. A SCPPA Participating Member (not including Purchaser) that causes a Payment Default under its Power Sales Agreement that has not been remedied and where the Defaulting SCPPA Participating Member has not been remedied or cured.
21. Delivery Output cost component. “Delivery Output cost component” is defined in Section 4.4.1.
22. Delivery Term of the Power Purchase Agreement. The time period for the delivery of Energy pursuant to the Power Purchase Agreement as set forth therein.

23. Dynamic Scheduling. “Dynamic Scheduling” shall mean the automated scheduling of Energy from the Point of Delivery to Purchaser’s control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to the Point of Delivery from the Facility.
24. Energy. “Energy” shall have the meaning provided in the Power Purchase Agreement.
25. Environmental Attributes. “Environmental Attributes” shall have the definition set forth in the Power Purchase Agreement.
26. Facility. “Facility” shall have the meaning provided in the Power Purchase Agreement.
27. Facility Output. All output, rights, and other tangible or intangible benefits derived from the Facility, whatsoever, including without limitation all Energy, Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
28. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Board of Directors.
29. Force Majeure. “Force Majeure” shall have the definition set forth in the Power Purchase Agreement.
30. Generator Interconnection Agreement. “Generation Interconnection Agreement” shall have the definition set forth in the Power Purchase Agreement.
31. Initial Payment Default Date. The earlier of (i) the end of the fifth Day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last Day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
32. Interconnection Contracts. The contracts providing for the interconnections and associated facilities which interconnect the Facility with the Transmission System and substations and provide for the delivery of Facility Output. Interconnection Contracts shall include, without limitation the Generator Interconnection Agreement as well as any other contracts related to interconnection of the Facility with the Transmission System.
33. Joint Powers Agreement. The “Southern California Public Power Authority Joint Powers Agreement” dated as of November 1, 1980, as amended or modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
34. LADWP. The City of Los Angeles, acting by and through the Department of Water and Power.
35. Month. A calendar month.
36. Monthly Costs. “Monthly Costs” is defined in Section 4.5.

37. Moody's. "Moody's" shall mean Moody's Investor Services, Inc.
38. Operating Budget. The operating budget approved by the Board of Directors which shall show a detailed estimate of Total Power Costs for a Power Supply Year and all revenues, income or other funds to be applied to Total Power Costs for and applicable to such Power Supply Year.
39. Payment Default. A failure by the Purchaser to pay when due all of its Billing Statement for any Month.
40. Payment Default Period. That period of time beginning on the initial date of a Payment Default and ending thirty (30) Days following a notice of default as provided in accordance with Section 11.2 hereof.
41. Performance Security. "Performance Security" shall have the definition set forth in the Power Purchase Agreement.
42. Permit. "Permit" shall have the definition set forth in the Power Purchase Agreement.
43. Person. "Person" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
44. Point(s) of Delivery. Point(s) of Delivery shall have the definition set forth in the Power Purchase Agreement.
45. Power Purchase Agreement. The Power Purchase Agreement by and among Southern California Public Power Authority, Sacramento Municipal Utility District, the Modesto Irrigation District and the Turlock Irrigation District, and ARP-Loyalton Biomass, LLC, dated as of October 19, 2017, attached hereto as Appendix C, as the same may be amended from time to time.
46. Power Purchase Agreement General and Administrative cost component. "Power Purchase Agreement General and Administrative cost component" is defined in Section 4.4.2.
47. Power Purchase Provider. ARP-Loyalton Biomass, LLC, as the counterparty to SCPPA under the Power Purchase Agreement, and any other entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
48. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) 90 Days before the scheduled date for issuance of the Bonds, (iv) the date of Commercial Operation of the Facility, or (v) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. The first Power Supply Year shall end on the last Day of the then current Fiscal Year.
49. Project. The term "Project" means the SCPPA Percentage of Facility Output and shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of

SCPPA pursuant to the Power Purchase Agreement and the other Project Agreements, including but not limited to all associated rights, liabilities, interests and obligations. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.

50. Project Agreements. Any project management agreement, Power Sales Agreements, the Power Purchase Agreement, the Interconnection Contracts, the Ancillary Documents or any other contracts for the purchase, procurement, delivery or transmission of Facility Output, or any other agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of Facility Output, or agreements to which SCPPA is a party relating to the administration or management of the Project.
51. Project Determination. “Project Determination” means any matter involving a question pertinent to the studying, investigating, planning, financing, developing, acquiring, constructing, reconstructing, operating, maintaining, administering, managing, improving, enlarging, or bettering of the Project.
52. Project Manager. SCPPA in its capacity as Project Manager or a designee or designees appointed by SCPPA to carry out SCPPA’s responsibilities as Project Manager under this Agreement.
53. Project Rights. All rights and privileges of the Purchaser under this Agreement, including but not limited to its right to receive its SCPPA Entitlement Share under this Agreement.
54. Project Rights and Obligations. The Purchaser’s Project Rights and obligations under the terms of this Agreement.
55. Prudent Utility Practices. “Prudent Utility Practices” shall have the meaning provided in the Power Purchase Agreement.
56. Reserve Fund cost component. “Reserve Fund cost component” is defined in Section 4.4.4.
57. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
58. S & P. “S&P” shall mean Standard & Poor’s Financial Services LLC.
59. SCPPA Participant Entitlement Share. With respect to a particular SCPPA Participating Member and during each Power Supply Year, the percentage entitlement, as set forth for such SCPPA Participating Member in Appendix B of this Agreement, of the SCPPA Percentage of Facility Output delivered at the Point of Delivery.
60. SCPPA Participating Member(s). Those entities executing Power Sales Agreements, together in each case with each entity’s successors or assigns, identified as “SCPPA Participating Members” in Appendix B of this Agreement.

61. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser under this Agreement, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the transfer of Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non simultaneous green energy exchanges.
62. Supplementary Services cost component. “Supplementary Services cost component” is defined in Section 4.4.3.
63. Total Power Costs. “Total Power Costs” has the meaning described in Section 4.4.
64. Transmission System. “Transmission System” shall have the meaning set forth in the Power Purchase Agreement.
65. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
66. WECC. The Western Electricity Coordinating Council, or its successor.

APPENDIX B¹

SCHEDULE OF SCPPA PARTICIPATING MEMBERS,
SCPPA CAPACITY AMOUNTS,
SCPPA PARTICIPANT ENTITLEMENT SHARES,

SCPPA PARTICIPATING MEMBERS	SCPPA CAPACITY AMOUNTS (MW)	SCPPA PARTICIPANT ENTITLEMENT SHARES
City of Anaheim	0.806 MW	6.728%
Imperial Irrigation District	1.491 MW	12.447%
LADWP	8.876 MW	74.097%
City of Riverside	0.806 MW	6.728%
TOTAL	11.979	100%

¹ Appendix B may be revised in accordance with the provisions of Section 10.2 of this Agreement.

APPENDIX C
POWER PURCHASE AGREEMENT

POWER PURCHASE AGREEMENT

AMONG

**ARP-LOYALTON COGEN LLC
(as “Seller”)**

AND

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

SACRAMENTO MUNICIPAL UTILITY DISTRICT

AND

MODESTO IRRIGATION DISTRICT

AND

**TURLOCK IRRIGATION DISTRICT
(together, as “Buyers”)**

Dated as of October 19, 2017

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POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), dated as of this 19th day of October, 2017, is being entered into by and among the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the Act and the Joint Powers Agreement (each as defined below), ("*SCPPA*"), the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a California municipal utility district ("*SMUD*"), the Modesto Irrigation District, an irrigation district organized and existing under the laws of the State of California ("*MID*"), the TURLOCK IRRIGATION DISTRICT, an irrigation district organized and existing under the laws of the State of California ("*TID*"), and ARP-LOYALTON COGEN LLC, a limited liability company organized and existing under the laws of the State of California ("*Seller*"). SCPPA, SMUD, MID, and TID are each referred to herein as a "*Buyer*," and together as "*Buyers*." Each Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together as the "*Parties*."

RECITALS

WHEREAS, on March 13, 2017, SCPPA issued a request for proposals ("*RFP*") to purchase energy, capacity, and environmental attributes complying with the mandate imposed by Senate Bill 859 that was approved by the Governor of California on September 14, 2016, for the procurement of biomass resources ("*SB 859*"); and

WHEREAS, Seller responded to SCPPA's RFP, and, following negotiation, Seller has agreed to sell to Buyers, and Buyers have agreed to purchase from Seller, certain renewable energy and associated capacity rights and environmental attributes for the purchase price set forth herein; and

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

AGREEMENT

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

ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

Appendices

APPENDIX A-1	FACILITY, PERMITS, AND OPERATOR
APPENDIX A-2	MAP OF FACILITY
APPENDIX B	FORM OF ATTESTATION
APPENDIX C	FORM OF LETTER OF CREDIT
APPENDIX D	INSURANCE
APPENDIX E	BUYERS AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION
APPENDIX F	PERCENTAGE OF FACILITY OUTPUT; APPLICABLE MW SHARE
APPENDIX G	BUSINESS POLICY FORMS
APPENDIX H	FACILITY LENDER CONSENT

SCHEDULES

SCHEDULE 11.2(h)	STRUCTURE OF PARENT ENTITIES
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“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or, as is appropriate given the context, is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies or activities of such Person, whether through ownership of voting securities, its capacity as a sole or managing member, its capacity as a general partner, by contract or otherwise.

“**Aggregate True-Up Period**” has the meaning set forth in Section 7.7(e).

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

“**Agreement Term**” has the meaning set forth in Section 2.1(a).

“**Ancillary Documents**” means the Site Control Documents and all material agreements entered into by and between Seller and any of its Affiliates or between Seller or any Seller Affiliate and any Buyer, in each case, related to the Facility or the Site.

“**Applicable MW Share**” means the amount, measured in MW, of Facility output allocated to SCPPA’s Participating Members, SMUD, MID, and TID, as set forth in Appendix F, as may be adjusted pursuant to Section 2.3(h).

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

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

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

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

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

“**Brown Act**” has the meaning set forth in Section 13.21(c).

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

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

“Buyers’ Agent” means the agent appointed by Buyers pursuant to the Buyers Joint Project Agreement to administer this Agreement on behalf of Buyers and, in the case of SCPPA as a Buyer, the Participating Members, which appointment may be changed from time to time, subject to the representation, warranty and covenant in Section 11.1(d), by written agreement among Buyers with notice thereof to Seller. Notice information for Buyers’ Agent shall be as set forth on Appendix E. As of the Effective Date, Buyers’ Agent shall be SCPPA.

“Buyers Joint Project Agreement” means the Buyers Joint Project Agreement entered into by and among Buyers, dated as of the Effective Date.

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

“CAISO” means the California Independent System Operator.

“CAISO Costs” means (a) all current and future costs, expenses, fees, charges, credits and other amounts assessed by the CAISO to Seller or to Buyers in connection with the Facility and (b) any and all costs, expenses, fees, charges and other amounts incurred by Seller and Buyers in connection with performing Scheduling services, settlement services and serving as or arranging for the Scheduling Coordinator. For the avoidance of doubt, CAISO Costs include any and all fees, costs and charges that come into existence for integration of the Facility into the CAISO grid and any imbalance costs, expenses and charges.

“CAISO Tariff” means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto and any replacement thereof or successor thereto in effect.

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

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

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

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

“CEC Performance Standard” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local

publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over any Buyer.

“Change in Control” means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following: (a) a merger or consolidation of Seller or any upstream equity owner of Seller at any level below the Ultimate Parent Entity (any such entity, an **“Upstream Equity Owner”**) with or into any other Person or any other reorganization in which the equity owners of Seller or such Upstream Equity Owner immediately prior to such consolidation, merger, or reorganization, own fifty percent (50%) or less of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity after such consolidation, merger, or reorganization, (b) any transaction or series of related transactions following which the Ultimate Parent Entity, directly or indirectly, no longer (1) remains the owner of more than fifty percent (50%) of the equity ownership of Seller or any Upstream Equity Owner or (2) retains the power to control the management and policies of Seller or any Upstream Equity Owner, (c) a sale, lease, or other disposition of all or substantially all of the assets of Seller or any Upstream Equity Owner, (d) the dissolution or liquidation of Seller or any Upstream Equity Owner, or (e) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing.

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

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

(a) Servicing of the Facility’s generator has been completed in accordance with the terms and conditions of this Agreement, and the Facility (including the Facility Energy and associated Environmental Attributes) is RPS Compliant and EPS Compliant and possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement and for delivery of Facility Energy to the Point of Delivery;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to recommence operation of the Facility and has demonstrated the sustained operation of the Facility and the delivery of Facility Energy equal to at least ninety percent (90%) of the Contract Capacity during a period of 24 consecutive hours;

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

(d) Each Buyer has received the Performance Security as provided in Section 5.6 in a form reasonably acceptable to Buyers;

(e) The Facility is both authorized and able to operate and deliver Energy at the Contract Capacity in accordance with the Generator Interconnection Agreement, Prudent Utility Practices, the Requirements, and all Requirements of Law;

(f) Seller has entered into interconnection agreements with Transmission Providers pursuant to which it has obtained the interconnection rights necessary to deliver Facility Energy to the Point of Delivery;

(g) Seller has obtained Insurance coverage for the Facility as required by Appendix D, and Seller has provided reasonable evidence to Buyers that the Insurance is in full force and effect;

(h) Seller has delivered to Buyer, and Buyer has approved, the Quality Assurance Program;

(i) Seller has delivered to Buyer, and Buyer has approved, the Non-Consolidation Opinion;

(j) Seller has obtained certification from the CEC that the Facility is CEC Certified or a recertification from the CEC that the Facility remains CEC Certified, if required pursuant to CEC regulations applicable to the Facility and has delivered to Buyers evidence that the Facility has been CEC Certified; and

(k) Seller has provided reasonable evidence to Buyers that Seller has secured full Site Control and ownership of the Facility.

“Commercial Operation Date” means the date on which Commercial Operation of the Facility occurs, as determined pursuant to Section 3.3.

“Confidential Information” has the meaning set forth in Section 13.21(a).

“Contract Capacity” means 18 MW, as adjusted pursuant to Section 2.3(h).

“Contract Price” means \$97.50 per MWh of Facility Energy.

“Contract Year” means (a) with respect to the first (1st) Contract Year, the period beginning on the Commercial Operation Date and extending through December 31 of the calendar year in which the Commercial Operation Date occurs, (b) with respect to the second (2nd) through the fifth (5th) Contract Years, the applicable calendar year, and (c) with respect to the sixth (6th) Contract Year, the period beginning on January 1 of the applicable calendar year and extending through the day before the anniversary of the Commercial Operation Date.

“Costs” has the meaning set forth in Section 12.3(g)(iii).

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

“**CPRA**” has the meaning set forth in Section 13.21(c).

“**CRO**” has the meaning set forth in Section 13.25(g).

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

“**Daily Delay Damages**” has the meaning set forth in Section 3.4(b).

“**DBE**” has the meaning set forth in Section 13.25(c)(i).

“**Deemed Generated Energy**” has the meaning set forth in Section 7.4(c).

“**Default**” has the meaning set forth in Section 12.1.

“**Defaulting Party**” has the meaning set forth in Section 12.1.

“**Delivery Term**” has the meaning set forth in Section 2.1(b).

“**Dispute**” has the meaning set forth in Section 13.3(a).

“**Dispute Notice**” has the meaning set forth in Section 13.3(a).

“**Downgrade Event**” means, with respect to a financial institution, or a provider of a letter of credit or Escrow Account hereunder, any event that results in (a) the failure of such financial institution to maintain the credit rating or organizational status of a Qualified Issuer, as applicable, or (b) the commencement by such a financial institution of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law or regulation), or (c) any Buyer electing to terminate any relationship with such Person pursuant to directives from any Governmental Authorities applicable to such Buyer or, in the case of SCPPA, any Participating Member.

“**DVBE**” has the meaning set forth in Section 13.25(c).

“**Early Termination Date**” has the meaning set forth in Section 12.3(a).

“**EBO**” has the meaning set forth in Section 13.25(f).

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

“**Effective Date**” means the date on which the last Party to execute this Agreement executed this Agreement, as specified on the signature pages hereto. If any Buyer or Seller fails to set forth a date of execution with its signature, such Buyer or Seller hereby authorizes SCPPA, as Buyer’s Agent, to insert, as the date of execution, the date on which such signature was received by SCPPA.

“**Electric Metering Devices**” means all meters, metering equipment, and data processing equipment conforming to the requirements set forth in Section 10.6 and used to measure, record, or transmit data relating to the Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“**Energy**” means electrical energy.

“**Environmental Attribute Reporting Rights**” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992 (Title 42, United States Code § 13385) or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“**Environmental Attributes**” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated that are (a) at any time recognized or deemed of value (or both) by any Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Facility of Energy during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “*UNFCCC*”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including without limitation any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto), or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable Energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (1) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Energy production from any portion of the Facility, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (2) depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility unrelated to its status as a generator of renewable or

environmentally clean Energy, and (3) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“**EPA**” means the United States Environmental Protection Agency.

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

“**EPS Law**” means Sections 8340 and 8341 of the California Public Utilities Code.

“**Escrow Account**” has the meaning set forth in Section 5.6(a).

“**Exiting Buyer**” has the meaning set forth in Section 2.3(h).

“**Expected Daily Deliveries**” has the meaning set forth in Section 12.3(d).

“**Facility**” means the 19.9 MW biomass power generating facility located at 100 South Railroad Ave, Loyalton, CA , as further described in Appendix A-1 and depicted on Appendix A-2, including all property interests and related transmission and other facilities.

“**Facility Cost**” means Twenty Million Dollars (\$20,000,000.00).

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

“**Facility Energy**” means the lesser of (a) the Energy generated by the Facility based on the Contract Capacity, as measured by Electric Metering Devices installed at the Facility pursuant to Section 10.6, or (b) the Energy that the Scheduling Coordinator Schedules for delivery to the Point of Delivery.

“**Facility Lender**” means any financing party providing Facility Debt in connection with the purchase, completion, or operation of the Facility, including any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

“**Facility Lender Consent**” has the meaning set forth in Section 13.7(d).

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

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

“**Force Majeure**” has the meaning set forth in Section 13.6(b).

“**Force Majeure Notice**” has the meaning set forth in Section 13.6(a).

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

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

“**Gains**” has the meaning set forth in Section 12.3(g)(i).

“**Generator Interconnection Agreement**” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, NV Energy, and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO grid, including any description of the plan for interconnecting to the CAISO grid.

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

“**Guaranteed Commercial Operation Date**” means the later of (a) January 1, 2018, and (b) the date that is 30 days after the Effective Date.

“**High Hazard Requirement**” has the meaning set forth in Section 11.3.

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

“**Indemnitees**” has the meaning set forth in Section 13.19(a).

“**Independent Manager**” means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (a) a member, stockholder, equity holder, director, manager (except as

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

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

“**Interest Rate**” has the meaning set forth in Section 10.3.

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

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

“**LAAC**” has the meaning set forth in Section 13.25(b)(i).

“**LADWP**” means the City of Los Angeles, acting by and through the Department of Water and Power.

“**LGBTBE**” has the meaning set forth in Section 13.25(c)(i).

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

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

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

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in Appendix C of the CAISO Tariff.

“**Losses**” has the meaning set forth in Section 12.3(g)(ii).

“**MBE**” has the meaning set forth in Section 13.25(c)(i).

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

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

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

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

“**MWh**” means megawatt-hours.

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

“**Non-Consolidation Opinion**” means a reasoned opinion of Seller’s legal counsel, (such counsel to be reasonably acceptable to the Buyers), in form and substance acceptable to each Buyer, as to the non-consolidation of Seller in a Bankruptcy proceeding of any Upstream Equity Owner, addressed and delivered to the Buyers on or before the Commercial Operation Date.

“**Non-Defaulting Party**” has the meaning set forth in Section 12.3(a).

“**Non-SB 859 Compliant Products**” has the meaning set forth in Section 7.7(f).

“**Notifying Party**” has the meaning set forth in Section 13.3(a).

“**NV Energy**” means NV Energy, Inc., a Nevada corporation.

“**OBE**” has the meaning set forth in Section 13.25(c)(i).

“**OSHA**” means the Occupational Safety and Health Administration of the United States Department of Labor.

“**Outside Commercial Operation Date**” means the date that is 90 days after the Guaranteed Commercial Operation Date, which date shall not be subject to extension of any kind (except as provided in Section 3.4(c)).

“**Pacific Prevailing Time**” means the local time in the State of California.

“**Participating Members**” means the City of Anaheim, Imperial Irrigation District, LADWP, and the City of Riverside.

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

“**Percentage of Facility Output**” means, with respect to a Buyer, the percentage of Facility output allocated to such Buyer as set forth in Appendix F, as may be adjusted pursuant to Section 2.3(h).

“**Performance Security**” has the meaning set forth in Section 5.6(a).

“**Permits**” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required

to be filed, submitted, obtained, or maintained by any Person with respect to the ownership, possession, testing, operation or maintenance of the Facility, the production, sale, and delivery of Products from the Facility, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the Permits described in Appendix A-1.

“Permitted Encumbrances” means (a) the Lien in favor of the Facility Lender, (b) any Lien approved by Buyers’ Agent in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, and (c) other Liens secured by, or encumbrances on, the Facility that (i) at any time do not, in the aggregate, exceed 50% of the Facility Cost, and (ii) satisfy one or more of the following criteria: (A) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, (B) suppliers’, vendors’, mechanics’, workman’s, repairman’s, employees’ or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, (C) Liens of any judgment, if such judgment shall not have remained undischarged or unstayed on appeal for more than three (3) months, (D) encumbrances consisting of zoning restrictions, licenses, easements, restrictions on the use of the Site and minor defects and irregularities in title which do not materially impair the use of the Site, the Facility or any portion thereof by Seller or materially impact the value of the Site, the Facility or any portion thereof, (E) rights arising under the Site Control Documents, or (F) other Liens incidental to the conduct of Seller’s business or the ownership of its property that were not incurred in connection with the borrowing of money or obtaining advances of credit and do not materially detract from the value of the Facility, or any portion thereof, or its use. Notwithstanding anything to the contrary contained herein, a “Permitted Encumbrance” shall not be construed as a waiver of any condition or requirement contained in Section 11.4 or Section 13.7 of this Agreement.

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

“Point of Delivery” means CAISO Summit 120 kV.

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

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

“Products” means any and all Facility Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing that are or can be produced by, or are associated with, the Contract Capacity of the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, and renewable energy credits. The Products shall meet the standard of “Portfolio Content Category 1” as defined by RPS Law.

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

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

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

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

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

“Qualified Buyer Assignee” means a Participating Member, any other non-participating member of SCPPA or a third party Person that is rated (a) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P, or (b) “Aa3” or higher by Moody’s or “AA-” or higher by S&P if such Person is rated only by either S&P or Moody’s, or (c) equivalent ratings by any other credit rating agency of recognized national standing.

“Qualified Issuer” means a Person reasonably acceptable to Buyers’ Agent that maintains a United States domestic branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (a) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P or (b) “Aa2” or higher by Moody’s, or “AA” or higher by S&P if such Person is rated only by either S&P or Moody’s.

“Qualified Transferee” means a Person that (a) has a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P or (ii) “Aa2” or higher by Moody’s, or “AA” or higher by S&P if such Person is rated only by either S&P or Moody’s, (b) executes a written assumption agreement in favor of Buyers pursuant to which such Person shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents, and (c) is reasonably acceptable to Buyers.

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

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

“Recipient Party” has the meaning set forth in Section 13.3(a).

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

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

“Requirement of Law” means any federal, state, local or other law (including any environmental law, EPS Law, RPS Law, SB 859, and the UCC), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

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

“RFP” has the meaning set forth in the recitals to this Agreement.

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

“RPS Law” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code § 25740 through 25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC.

“SB 859” has the meaning set forth in the recitals to this Agreement.

“**SB 859 Compliance**” or “**SB 859 Compliant**” means, when used with respect to the Facility, that the Facility qualifies as a biomass resource from which Buyer is required to purchase capacity under SB 859.

“**SB 859 Feedstock Requirements**” has the meaning set forth in Section 11.3.

“**SB 859 Withholding**” has the meaning set forth in Section 7.7(e).

“**SBE**” has the meaning set forth in Section 13.25(c).

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

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

“**Scheduled Outage**” means any outage with respect to the Facility other than a Forced Outage.

“**Scheduled Outage Projection**” has the meaning set forth in Section 4.3.

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

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

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

“**Seller Parties**” means Seller and any Affiliate of Seller that is a party to an Ancillary Document.

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

“**SFPO**” has the meaning set forth in Section 13.25(h).

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

“**Site Control**” means that Seller has demonstrable exclusive right to control the Facility Site as lessee or fee owner and a non-exclusive easement or right of way with respect to the use of the Transmission and Roadway Site, in each case, so as to permit Seller and the Seller Parties to perform their obligations under this Agreement and the Ancillary Documents to which they are a party.

“**Site Control Documents**” means the real property leases and easements for the Site that together establish Site Control.

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

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

“**Special Purpose Entity**” means a limited liability company that at all times prior to, on and after the Effective Date:

(a) did not, does not, and will not (i) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets, except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

(n) does not and will not have any of its obligations guaranteed by any Affiliate and does not and will not hold itself out as being responsible for the debt for borrowed money obligations of any other Person;

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

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

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

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

(s) has paid and will pay its own liabilities and expenses, including the salaries of its own employees (to the extent Seller has any employees), out of its own funds and assets and will maintain a sufficient number of employees or independent contractors or contractors in light of its contemplated business operations;

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

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

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

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including paying for shared space and services performed by any employee of an Affiliate;

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

(y) has not pledged and will not, except as permitted under Section 13.7(d), pledge its assets for the benefit of any other Person;

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

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

(bb) has and will have no indebtedness other than (i) Facility Debt and any indebtedness in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business and not evidenced by a note relating to its ownership and operation of the Facility and its routine administration, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Fifty Thousand Dollars (\$50,000) in the aggregate, and (iv) other liabilities that are expressly permitted pursuant to this Agreement.

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

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

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

“**Sustainable Forest Management Requirement**” has the meaning set forth in Section 11.3.

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

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

“**Termination Notice**” has the meaning set forth in Section 12.3(a).

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

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

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

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

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

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

“**True-Up Period**” has the meaning set forth in Section 7.7(e).

“**True-Up Report**” has the meaning set forth in Section 7.7(e).

“**Ultimate Parent Entity**” of Seller means, (a) as of the Effective Date, American Renewable Power LLC, and (b) from and after any Change in Control where the Ultimate Parent Entity changes, the entity specified by the Parties on Schedule 11.2(h) as being the “Ultimate Parent Entity”.

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

“**WBE**” has the meaning set forth in Section 13.25(c)(i).

“WECC” means the Western Electricity Coordinating Council.

“WECC Prescheduling Day” means a Prescheduling Day, as defined by WECC.

“WREGIS” means Western Renewable Energy Generation Information System.

“WREGIS Certificates” has the meaning set forth in the WREGIS Operating Rules.

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

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

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

- (a) time is of the essence
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person’s successors and assigns (regardless of whether such Person’s successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, act, statute, law, instrument, tariff or Requirement means such agreement, document, act, statute, law, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition unless otherwise indicated;
- (g) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term, regardless of whether words such as “without limitation” are expressly included in the applicable provision;

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

(j) unless otherwise indicated, reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” shall mean a calendar day, unless otherwise indicated; and

(k) the term “or” is not exclusive, regardless of whether “and/or” is used in the applicable provision.

ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Term.

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

(b) **Delivery Term.** This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Commercial Operation Date and ending at 11:59 pm on the day before the fifth (5th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

Section 2.2 Survivability. The provisions of this Article II, Section 10.3, Article XI, Article XII, Section 13.19 and Section 13.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article X (other than Section 10.3) shall survive for a period of four (4) years following final payment made by Buyers hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to any period prior to termination of this Agreement.

Section 2.3 Early Termination.

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

(b) **Early Termination for Failure to Provide Performance Security.** Any Buyer may, in its sole discretion, without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion, terminate this Agreement, in either case, effective upon notice to Seller, if Seller fails to deliver the Performance Security within ten (10) days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party, or Non-Defaulting Parties, as the case may be, may terminate this Agreement as set forth in Section 12.3.

(d) **Early Termination for Failure to Achieve Commercial Operation Date.**

Any Buyer may, in its sole discretion and without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion and without penalty to Buyers, terminate this Agreement, in either case, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date, except as set forth in Section 3.3.

(e) **Early Termination for Failure to Maintain EPS, RPS, and SB 859 Compliance.** Any Buyer may, in its sole discretion and without penalty to such Buyer, withdraw from this Agreement, and Buyers may collectively, in their sole discretion and without penalty to Buyers, terminate this Agreement, in either case, effective upon notice to Seller, if (i) at any time the Facility does not satisfy all requirements to be RPS Compliant, EPS Compliant, and SB 859 Compliant, or (ii) Seller does not satisfy the SB 859 Feedstock Requirements for a Contract Year.

(f) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 13.6(c).

(g) **Early Termination for Business Policies.** SCPPA may, in its sole discretion and without penalty to SCPPA, withdraw from this Agreement without penalty to SCPPA, effective upon notice to Seller for Seller's failure to comply with the provisions set forth in Section 13.25.

(h) **Effect of Withdrawal.** Any withdrawal from, or early termination of, this Agreement under this Section 2.3 shall be without prejudice to the rights and remedies of a Party for Defaults under Section 12.1. If a Buyer withdraws from this Agreement or this Agreement is terminated with respect to a Buyer (such Buyer, the "**Exiting Buyer**") as provided in this Section 2.3, then:

(i) Each remaining Buyer shall have the right to take over all or a portion of the Exiting Buyer's Percentage of Facility Output by notice to the other Parties within ninety (90) days after such withdrawal or termination and to assume the Exiting Buyer's obligations under this Agreement with respect thereto.

(ii) From the effective date of the withdrawal or termination with respect to the Exiting Buyer until any remaining Buyer elects to take over the Exiting Buyer's Percentage of Facility Output (if ever), (A) the Contract Capacity shall be reduced by an amount equal to the product of the Exiting Buyer's Percentage of Facility Output and the then-current Contract Capacity, (B) each remaining Buyer's and SCPPA Participating Member's Applicable MW Share shall remain unchanged, and (C) each remaining Buyer's Percentage of Facility Output (and the corresponding percentages of total capacity set forth next to each Participating Member on Appendix F) shall be adjusted to equal the percentage equivalent of a fraction, the numerator of which is equal to such Buyer's Applicable MW Share, and the denominator of which is equal to the Contract Capacity, as reduced pursuant to clause (A) of this Section 2.3(h)(ii).

(iii) At such time as any remaining Buyer elects in writing to take over all or a portion of the Exiting Buyer's Percentage of Facility Output as provided in Section 2.3(h)(i):

(A) Such remaining Buyer's Applicable MW Share and the Contract Capacity (as reduced pursuant to Section 2.3(h)(ii)) shall be increased in MW by an amount equal to the Exiting Buyer's Applicable MW Share that such remaining Buyer is taking over; and

(B) Each remaining Buyer's Percentage of Facility Output shall be adjusted to equal the percentage equivalent of a fraction, the numerator of which is equal to such Buyer's Applicable MW Share (or, in the case of SCPPA, the sum of the Applicable MW Shares of all of SCPPA's Participating Members), as adjusted pursuant to Section 2.3(h)(iii)(A) (if applicable), and the denominator of which is equal to the Contract Capacity, as adjusted pursuant to Section 2.3(h)(iii)(A).

ARTICLE III PREPARATION OF THE FACILITY

Section 3.1 General.

(a) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to maintain and operate the Facility in accordance with the Requirements and for the performance of Seller's obligations hereunder. Seller shall provide to any Buyer any information requested by such Buyer related to such Permits, including information concerning any conditions or requirements set forth in such Permits or any mitigation plans or monitoring programs required by such Permits.

(b) **Meetings with Governmental Authorities.** Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities.

(c) **Other Information.** In addition to the reports required to be delivered under this Agreement, Seller shall provide to Buyers' Agent such other information regarding the operations of Seller, its Subcontractors or the Facility, financial or otherwise, and other data concerning the Seller, its Subcontractors or the Facility as Buyers' Agent may, from time to time, reasonably request.

Section 3.2 Subcontracts. Seller shall cause provisions to be included in each Subcontract that provide: (a) Buyers' Agent with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols) and the right to inspect, make notes about, and review all documents and information as Buyers' Agent may reasonably request, subject to redaction of confidential or proprietary information; and (b) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyers' Agent and its agents, representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the exercise of Buyers' rights under Section 5.2.

Section 3.3 Certification of Commercial Operation Date. Seller shall provide Buyers' Agent with notice in accordance with Section 13.2 when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "**Commercial Operation**" have been satisfied. Buyers' Agent shall either accept the notice, or reject the notice if reasonable cause exists, *provided* that Buyers' Agent shall not unreasonably

withhold, delay or condition any acceptance of such notice, and in any event shall provide in reasonable detail a written description of the reasons for any rejection. Buyers' Agent shall in all cases respond to any such notice within twenty (20) days after receipt thereof by Buyers' Agent, and Buyers shall be deemed to have accepted such notice if Buyers' Agent fails to respond in such time. If Buyers' Agent rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. The Commercial Operation Date shall be deemed to have occurred as of the date of any Seller notice of Commercial Operation that is accepted (or deemed accepted) by Buyers. So long as Seller provides, in good faith, notice to Buyers' Agent of the achievement of Commercial Operation prior to the Outside Commercial Operation Date, no Buyer may withdraw from this Agreement, and Buyers may not collectively terminate this Agreement under Section 2.3(d) for failure to achieve the Commercial Operation Date under Section 3.4, so long as (a) Buyers' Agent either (i) accepts such notice or (ii) rejects such notice due to minor defects or deficiencies that do not affect the ability of the Facility to be placed in service and operated in accordance with this Agreement, and (b) Seller promptly corrects such minor defects or deficiencies identified by Buyers' Agent. In no event shall any extension of the Outside Commercial Operation Date under this Section 3.3 affect the amount of the Contract Price, notwithstanding any tax benefits lost as a result of the delay of the Commercial Operation Date.

Section 3.4 Commercial Operation Date.

(a) Seller shall achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date. The Guaranteed Commercial Operation Date shall be extended, on a day-for-day basis to the extent Seller is actually, demonstrably and unavoidably delayed in achieving the Commercial Operation Date due to (i) the failure by any Buyer to perform any covenant or obligation under this Agreement, or (ii) Force Majeure.

(b) If Seller fails to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.4(a)), Seller shall pay to each Buyer liquidated damages in an amount equal to such Buyer's proportionate share, based on each Buyer's Percentage of Facility Output, of the aggregate amount payable to Buyers. The amount of liquidated damages shall be calculated as (i) the number of days between the Guaranteed Commercial Operation Date and the date upon which either (A) the Commercial Operation Date is achieved, (B) the applicable Buyer withdraws (without penalty to such Buyer) from this Agreement pursuant to Section 2.3, or (C) this Agreement is terminated by Buyers pursuant to Section 2.3, as applicable, multiplied by (ii) Five Hundred Dollars (\$500) (the "**Daily Delay Damages**"). Daily Delay Damages shall be due and payable in weekly installments for the amounts thereof accrued during the previous week, beginning on the 7th day following the first day after the Guaranteed Commercial Operation Date. Seller shall continue to make such payments of Daily Delay Damages until the Commercial Operation Date is achieved, at which time Seller shall pay all previously accrued and unpaid Daily Delay Damages.

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

(d) The damages that Buyers would incur due to Seller's failure to timely achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date would be

difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyers' sole right and remedy, other than withdrawal without penalty from, or termination of, this Agreement, for Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit any Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with, before or after Seller's delay in achievement of the Commercial Operation Date, or in connection with any termination for failure to achieve the Commercial Operation by the Outside Commercial Operation Date.

Section 3.5 Decommissioning and Other Costs. No Buyer shall be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

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

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

(b) At its sole expense, operate and maintain the Facility in accordance with the Requirements and with due regard for the safety, security and reliability of the interconnected facilities and Transmission System;

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

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

Section 4.2 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law.

Section 4.3 Outages.

(a) On the Effective Date and, for each calendar year thereafter, no later than one hundred twenty (120) days prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyers' Agent with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "***Scheduled Outage Projection***"). The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during

such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall use commercially reasonable efforts to notify Buyers' Agent of any change in the Scheduled Outage Projection fifty-five (55) days prior to the first day of the month of the originally scheduled date of the Scheduled Outage, but in no event later than forty-five (45) days prior to the first day of the month of the originally-scheduled date of the Scheduled Outage.

(b) In addition to reporting outages to Buyers' Agent within any applicable time period for reporting outages under the CAISO Tariff and applicable rules and regulations of the CAISO, immediately upon identification of a situation likely to result in a Forced Outage occurring within a twenty-four (24) hour period that is likely to cause or require removal of the Facility from service, or a reduction in the maximum output capability of the Facility by one (1) MW or more from the value most recently recorded in the generation outage reporting system for the CAISO, Seller shall notify Buyers' Agent. For all other Forced Outages, Seller shall provide Buyers' Agent with as much advance notice as practicably possible, but in all cases, shall notify Buyers' Agent within thirty (30) minutes after the commencement of the Forced Outage. Seller shall provide detailed information concerning each Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage.

ARTICLE V COMPLIANCE DURING OPERATIONS; GUARANTEES

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

Section 5.2 Buyers' Rights to Monitor in General. Upon receipt by Seller of reasonable notice, each Buyer shall have the right, and Seller shall permit each Buyer and its Authorized Representative, advisors, engineers and consultants, to observe, inspect, and monitor the operations and activities of the Facility, including for the purpose of ensuring that Seller's fuel supply complies with SB 859. Seller shall cause its personnel, consultants, and contractors to be available to, and cooperate in all reasonable respects with, each Buyer and its Authorized

Representative, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility and each Buyer's exercise of its rights under this Section 5.2.

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

Section 5.4 Quality Assurance Program. Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") to be delivered by Seller and approved by Buyers prior to the Commercial Operation Date, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

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

Section 5.6 Performance Security.

(a) Within ten (10) days after the Effective Date, Seller shall furnish to each Buyer (i) one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix C, or (ii) cash (to be held in an escrow account pursuant to an escrow agreement with a Qualified Issuer in form and substance satisfactory to Buyers (an "*Escrow Account*")), or a combination of the two, and in the aggregate amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00), and delivered to each Buyer in an amount equal to such Buyer's proportionate share of such aggregate amount based on such Buyer's Percentage of Facility Output, which, in each case, shall guarantee Seller's obligations under this Agreement ("*Performance Security*"), and which Seller shall maintain in full force and effect until the end of the Delivery Term or until Buyers are required to return the Performance Security to Seller as set forth in Section 5.6(b) below.

(b) Each Buyer shall return its proportionate share of the unused portion of the Performance Security, if any, to Seller promptly after: (i) the Agreement Term has ended and

(ii) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(c) Each Buyer may draw on its proportionate share of the Performance Security (i) at any time following Seller's failure to timely pay Daily Delay Damages when due hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to make any other payment due to Buyers hereunder in the amount of such unpaid payment, including any Termination Payment, or (iii) if the amount of an invoice is less than the amount of an SB 859 Withholding as set forth in Section 7.7(e), *provided*, that, in the case of a draw under clause (ii), any such amount shall have been invoiced to Seller, or Seller shall have otherwise been notified thereof. Each Buyer may draw all or any part of such amounts due to such Buyer from any form of security under this Section 5.6, and in any sequence such Buyer may elect, in its sole discretion. Any failure of, or delay by, a Buyer in electing to draw any amount from the Performance Security shall in no way prejudice Buyer's rights to subsequently recover such amounts from the Performance Security or in any other manner. Within seven (7) days following any draw by any Buyer on its proportionate share of the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.6(a).

(d) Seller shall notify each Buyer of the occurrence of a Downgrade Event within seven (7) days after obtaining knowledge of the occurrence of such event. If a Downgrade Event occurs at any time, Seller shall replace, in accordance with this Section 5.6, the Performance Security from the Person that has suffered the Downgrade Event within five (5) days of Seller's knowledge of such Downgrade Event. Such replacement security shall meet the requirements of this Section 5.6. If the replacement Performance Security is not provided by Seller, each Buyer shall have the right to demand payment of the full amount of its proportionate share of such Performance Security, and each Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, each Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(e) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer or cash (to be held in an Escrow Account), in the amount required under this Section 5.6 within five (5) days of notice from any Buyer to Seller requesting such replacement Performance Security after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit, by at least 60 days prior to the expiration of the letter credit, to extend such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor any Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes bankrupt. If the replacement Performance Security is not delivered in accordance with this Section 5.6(e), each Buyer shall have the right to demand payment of its proportionate share of such Performance Security, and each Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that, if and to the extent such retained amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, each Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed in full.

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

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

ARTICLE VI PURCHASE AND SALE OF PRODUCT

Section 6.1 Purchase by Buyers. On and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and each Buyer shall purchase and receive at the Point of Delivery, its Percentage of Facility Output of the Products associated with Facility Energy at the applicable Contract Price, except that in no event shall (a) Buyers be obligated to purchase or receive more than 18 MWh in the aggregate in any hour or more than 18 MW in the aggregate in any instant, nor (b) any individual Buyer be obligated to purchase or receive, in any hour, more than the percentage of 18 MWh corresponding to its Percentage of Facility Output or, in any instant, more than the percentage of 18 MW corresponding to its Percentage of Facility Output.

Section 6.2 Seller's Failure. Seller shall neither (a) procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement, nor (b) unless excused by Force Majeure or a Buyer's failure to perform, sell to a third party all or any part of the Products required to be delivered by Seller under this Article VI, Article VII, Article VIII or Article IX.

Section 6.3 Buyers' Failure. Unless excused by Force Majeure or Seller's failure to perform, and except during any Curtailment Period, if any Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy required to be received by Buyers under this Article VI, Article VIII, or Article IX, such Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages; *provided* that Seller shall use commercially reasonable efforts to resell any Facility Energy and Environmental Attributes not able to be received by such Buyer. "**Cover Damages**" means the positive difference, if any, obtained by subtracting (i) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy and, if applicable, Environmental Attributes (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (ii) the applicable prices that would have been payable by SMUD, MID, TID, or SCPPA's Participating Members, as applicable, for the applicable portion of Facility Energy, and, if applicable, Environmental Attributes not received by such Buyer. Seller shall provide any Buyer that fails to receive all of any part of its portion of the Facility Energy with prompt written notice of the Cover Damages together with back-up documentation.

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

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General.

(a) Seller shall arrange for, and shall bear all risks and benefits associated with, delivery of all Facility Energy to the Point of Delivery, including the arrangement of and payment for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Facility Energy to the Point of Delivery at the CAISO grid, including charges related to control area services, export capability fees, inadvertent energy flows, interconnection costs, transmission losses to the Point of Delivery, the transmission of Facility Energy, and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery.

(b) Each Buyer shall be obligated to pay for its proportionate share of all Facility Energy delivered to the Point of Delivery, and each Buyer shall arrange for, and shall bear all risks associated with, acceptance of its proportionate share of Facility Energy from the Point of Delivery.

Section 7.2 Scheduling Coordinator; CAISO Cost Allocation.

(a) Buyers shall designate the Scheduling Coordinator to cause the Scheduling of Facility Energy to and at the Point of Delivery.

(b) Seller shall be responsible for and shall pay for all CAISO Costs, except that, notwithstanding the foregoing, each Buyer shall be obligated to either pay to the CAISO or reimburse Seller for any and all costs or charges under a Settlement Statement incurred by Seller because of such Buyer's failure to perform any covenant or obligation set forth in this Agreement to the extent such costs or charges are not already included in Cover Damages or in the Contract Price. Notwithstanding anything to the contrary contained herein, for the purposes of this Section 7.2(b), CAISO Costs does not include revenues associated with the delivery of Energy to the CAISO.

Section 7.3 Forecasting and Scheduling of Energy.

(a) Except upon the occurrence of a curtailment under Section 7.4, Buyers shall cause the Scheduling Coordinator to Schedule all Facility Energy in a reasonable and prudent manner in accordance with the CAISO Tariff, NERC and WECC operating policies and criteria, and any other applicable guidelines, and the Scheduling procedures provided in or developed under this Section 7.3. Seller, at its own cost, shall install metering, telemetry and control equipment so as to be able to provide Facility Energy to the Point of Delivery and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders. If, during any hour, the amount of Energy Scheduled on behalf of Seller for delivery into the CAISO at the Point of Delivery is greater than the amount of Facility Energy that is actually delivered to the Point of Delivery during such hour, then Buyers shall pay Seller any amounts (or collect any amounts paid due to negative pricing) that Buyers receive from or pays to the CAISO for any Energy delivered to the Point of Delivery that is not Facility Energy.

(b) Seller shall provide, or shall cause its designee to provide, to Buyers and the Scheduling Coordinator the following non-binding forecasts, any updates to such forecasts, and any other forecasts or updates required by WECC, based on the most current forecast of Facility Energy:

(i) At least one-hundred twenty (120) days before (a) the scheduled Commercial Operation Date and (b) the beginning of each Contract Year for the Facility, a non-binding forecast of each Month's average-day deliveries of Facility Energy from the Facility, for the following eighteen (18) Months.

(ii) No later than sixty (60) days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy for such Month.

(iii) No later than fourteen (14) days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy for the following Month.

(iv) On the first Business Day of each calendar week during the Delivery Term, a non-binding forecast of each day's average deliveries of Facility Energy, by hour, for the following fourteen (14) days.

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy during the Delivery Term, a copy of a non-binding hourly forecast of deliveries of Facility Energy for each hour of the immediately succeeding day. Any forecast provided on a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall, by 9:00 a.m. Pacific Prevailing Time, provide a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by

the Scheduling Coordinator, a non-binding preschedule forecast of Facility Energy via email. The pre-scheduled amounts of Facility Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Facility Energy at the time. A forecast provided a day prior to any non-Business Day shall include forecasts for the next day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide a copy of any and all updates to the forecast of the Facility's availability from the then-current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the preschedule plan submitted to the Scheduling Coordinator.

(c) Seller shall notify the Scheduling Coordinator via email, telephone, or other mutually acceptable method, of any outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify the Scheduling Coordinator of other unanticipated changes in availability by email or telephone as promptly as reasonably possible. Any notice delivered under this Section 7.3(c) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify the Scheduling Coordinator that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

(d) Throughout the Delivery Term, Seller shall provide to each Buyer and Participating Member the following data on a real-time basis, and in a format that reasonably allows such Buyer and Participating Member, as applicable, to copy, paste or otherwise use such data:

(i) Read-only access to megawatt capacity and any other Facility availability information required in accordance with CAISO requirements;

(ii) Read-only access via secure login credentials to Energy output information collected by the SCADA system for the Facility; *provided* that if any Buyer is unable to access the Facility's SCADA system, then upon written request from such Buyer, Seller shall provide Energy output information and meteorological measurements through such other format as may be mutually acceptable to Seller and such Buyer, all as may be updated from time to time based on advancements in technology in accordance with Prudent Utility Practices; and

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

Section 7.4 Curtailment.

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery immediately upon notice from Buyers' Agent, the CAISO, a Transmission Provider, or any balancing authority or reliability entity during Curtailment Periods affecting any Buyer. Any reduction pursuant to such a notice under this Section 7.4(a) shall be made ratably between the Buyers. Any Buyer affected by such a reduction shall not be obligated to pay Seller for the amount of reduced Facility Energy arising during a curtailment under this Section 7.4(a). If required by Buyers' Agent, the CAISO, a Transmission Provider, or any balancing authority or reliability entity, Seller shall provide the capability to implement curtailments and adjust ramp rates,

megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the SCADA system of Seller. Any such reduction of deliveries of Facility Energy shall be allocated on a pro-rata basis among any affected Buyers in accordance with such Buyer's Percentage of Facility Output.

(b) In addition to the curtailments described in Section 7.4(a), each Buyer may curtail deliveries of the Applicable MW Share of itself or, in the case of SCPPA, the Participating Members, as applicable, at any time and for the duration specified by such Buyer. Each Buyer shall provide a minimum of ten (10) minutes' notice to Seller of a request for curtailment under this Section 7.4(b), and Seller shall comply with such request in accordance with Prudent Utility Practices. In its curtailment notice to Seller, such Buyer shall indicate the duration of the curtailment period, which shall be for a minimum of fifteen (15) minutes, and the time at which such Buyer requests Seller to resume delivery of the Facility Energy to such Buyer, in accordance with the Applicable MW Share of its respective Buyers or SCPPA's Participating Members, as applicable. To the extent a Buyer requests any change in the duration of the requested curtailment period, Seller shall effectuate any such change no later than ten (10) minutes following notice from such Buyer's notification to Seller of the proposed change to curtailment. Seller shall respond to any Buyer's curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Each applicable Buyer shall pay Seller for any Deemed Generated Energy during any curtailment under this Section 7.4(b) in an amount equal to the Contract Price; *provided, however*, (i) Seller shall use commercially reasonable efforts to sell any such Deemed Generated Energy to third parties at a positive price to the extent permitted under the CAISO Tariff, and (ii) each Buyer shall only be obligated to pay for Deemed Generated Energy during any curtailment under this Section 7.4(b) to the extent the aggregate Deemed Generated Energy under this Section 7.4(b) attributable to such Buyer during any Contract Year exceeds 50 MWh. To the extent such Deemed Generated Energy is sold to a third party, (i) the obligation to pay the amounts set forth above for a curtailment by a Buyer under this Section 7.4(b) shall be reduced accordingly by an amount equal to the net proceeds Seller receives from such sales of Deemed Generated Energy (after subtracting any Scheduling fees, wheeling charges, and other associated costs, fees, and any other reasonable expenses incurred by Seller in connection with such sales), and (ii) any Environmental Attributes not sold with such Deemed Generated Energy shall be delivered in proportion with the Applicable MW Share, at no additional cost to such Buyers.

(c) "**Deemed Generated Energy**" means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Point of Delivery, but for a curtailment event arising under this Section 7.4, which amount shall be equal to (i) the amount of MWh provided for in Seller's most recently delivered forecast applicable to the curtailment event, less (ii) the amount of Facility Energy delivered to the Point of Delivery during the curtailment event, if any, or, if there is no forecast available, (A) an amount of MWh calculated based on an equation that incorporates relevant Facility and feedstock availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of Facility Energy that would have been delivered, less (B) the amount of Facility Energy delivered to the Point of Delivery during the curtailment event, if any; *provided* that, (1) if the applicable difference calculated pursuant to either of the formulas provided above is negative, the Deemed Generated Energy shall be zero (0), and (2) in no event shall Deemed Generated Energy be greater than 18 MWh in the aggregate for any hour. The equation in (A) and (B) shall be subject to review and approval by Buyers' Agent.

Section 7.5 No Payment. No Buyer shall be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 7.4.

Section 7.6 Title; Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to and at the Point of Delivery, and each Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of its proportionate share of the Energy after the Point of Delivery. Seller warrants that it will deliver Product to Buyers free and clear of all Liens created by any Person other than Buyers subject to the Requirements of Law. Title to and risk of loss as to all Energy and all of the associated Products shall pass from Seller to Buyers at the Point of Delivery.

Section 7.7 RPS, EPS, and SB 859 Compliance.

(a) Seller warrants and guarantees that, throughout the Delivery Term, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be CEC Certified, RPS Compliant, EPS Compliant, and SB 859 Compliant.

(b) Notwithstanding Section 7.7(a), if a Change in Law occurs that causes the Facility to cease to be CEC Certified, RPS Compliant, EPS Compliant, or SB 859 Compliant, Seller shall use commercially reasonable efforts to comply with such Change in Law, and cause the Facility to be CEC Certified, RPS Compliant, EPS Compliant, and SB 859 Compliant.

(c) If the CEC or any other Governmental Authority promulgates regulations relating to biomass procurement obligations under SB 859 that require amendments to this Agreement, then Buyers and Seller shall negotiate in good faith to amend the terms of this Agreement to the extent required to bring the Agreement into compliance with such procurement obligations.

(d) From time to time and at any time requested by any Buyer or any of its Authorized Representatives, Seller will furnish to each Buyer, Governmental Authorities, or other Persons designated by any Buyer, all certificates and other documentation reasonably requested by any Buyer or such Authorized Representatives in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant, EPS Compliant, and SB 859 Compliant.

(e) Seller shall include in each Monthly invoice delivered pursuant to Section 10.2(a) a report stating the volumes and type of feedstock used at the Facility to generate Energy for the period covered by such invoice (including sufficient information to determine the extent to which such feedstock complies with the SB 859 Feedstock Requirements for such period), and Seller shall update the report with such additional information as Buyers may reasonably require to confirm that Seller is on track to comply with SB 859 for the applicable Contract Year. In addition, commencing in July of each Contract Year and during each calendar month remaining in such Contract Year and in January of the following Contract Year, Seller shall deliver with each Monthly invoice a report demonstrating that it has met the SB 859 Feedstock Requirements during the time period covered by such report (as described in the next sentence, a

“**True-Up Period**”) and during the time period from the first day of the applicable Contract Year until the end of such True-Up Period (each such aggregate time period up to the last day of the applicable Contract Year, an “**Aggregate True-Up Period,**” and each such report, a “**True-Up Report**”). The True-Up Period for the first True-Up Report delivered in a Contract Year shall be from January 1 until June 30, and the True-Up Period for each successive True-Up Report during each Contract Year and January of the following Contract Year shall be the Month preceding the delivery of such True-Up Report. If any True-Up Report demonstrates that Seller did not meet the SB 859 Feedstock Requirements for both the applicable True-Up Period and the applicable Aggregate True-Up Period, each Buyer shall be entitled to withhold from the invoice for such Month as security an amount equal to such Buyer’s proportionate share, based on such Buyer’s Percentage of Facility Output, of \$8,580 multiplied by the greater of (i) the percentage points by which Seller failed to meet the Sustainable Forest Management Requirement during the applicable True-Up Period or (ii) the percentage points by which Seller failed to meet the High Hazard Requirement during such True-Up Period, each as stated in the applicable True-Up Report (the “**SB 859 Withholding**”). By way of example only, if Seller delivered 50% of the required feedstock with respect to the Sustainable Forest Management Requirement during a True-Up Period (30 percentage points less than the 80% required) and 40% of the required feedstock with respect to the High Hazard Requirement during such True-Up Period (20 percentage points less than the 60% required), and Seller has not met the SB 859 Feedstock Requirements for the applicable Aggregate True-Up Period, then Buyers will collectively be entitled to withhold \$257,400 ($\$8,580 * 30 = \$257,400$). If an SB 859 Withholding to which a Buyer is entitled is greater than the amount owed by such Buyer under the associated invoice, such Buyer may apply such excess SB 859 Withholdings to future Monthly invoices received from Seller or draw on its share of the Performance Security as provided in Section 5.6(c). If a subsequent True-Up Report demonstrates that Seller has met the SB 859 Feedstock Requirements for the Aggregate True-Up Period covered by such True-Up Report, each Buyer shall pay any applicable SB 859 Withholding retained or drawn in such Contract Year upon payment of the associated subsequent invoice.

(f) If the Aggregate True-Up Report delivered in January following any Contract Year indicates that Seller failed to maintain SB 859 Compliance of the Facility or failed to meet the SB 859 Feedstock Requirements for such Contract Year, then in addition to the other rights and remedies provided herein, Seller shall, within 30 days after receipt of an invoice therefor, reimburse each Buyer an amount equal to (i) the total amount that such Buyer paid Seller for Products delivered during such Contract Year (excluding SB 859 Withholdings), minus (ii) the total amount that such Buyer would have paid for the same quantity of Products not intended to meet the requirements of SB 859, but meeting the standards of “Portfolio Content Category 1” as defined by RPS Law (“**Non-SB 859 Compliant Products**”), determined based on the average of quotes for the price of Non-SB 859 Compliant Products on the last day of such Contract Year from three nationally recognized and mutually acceptable brokers. If the Parties do not agree on brokers required by this Section within five days after Buyers’ request for such quotes, the Buyers shall designate one broker, Seller shall designate one broker, and the two designated brokers shall designate the third broker. For the avoidance of doubt, nothing in Section 7.7(e) or this Section 7.7(f) limits in any way a Buyer’s right to withdraw from this Agreement under Section 2.3(e).