

RENEWABLE POWER PURCHASE AND SALE AGREEMENT
COVER SHEET

Seller: SunZia Wind PowerCo LLC, a Delaware limited liability company

Buyer: City of Riverside, a California charter city and municipal corporation in the City of Riverside, California

Description of Facility: A wind-powered electricity generating facility with a nameplate capacity of up to 3,515 MW, as described in Exhibit A, as such facility may be modified under the terms of this Agreement.

Milestones:

Milestone	Date for Completion
Executed Interconnection Agreement	3/27/2023
Guaranteed Construction Start Date	9/30/2024
Expected Commercial Operation Date	3/31/2026
Guaranteed Commercial Operation Date	9/30/2026
Outside Commercial Operation Date	3/31/2027

Delivery Term: The period for Product delivery will be for fifteen (15) Contract Years.

Guaranteed Capacity: 125 MW.

Expected Energy: 390,249 MWh per Contract Year, as such amount may be adjusted by Seller in accordance with the definition of “Expected Energy” below.

Product:

- Delivered Energy
- Green Attributes, including Renewable Energy Credits (Portfolio Content Category 1)
- Capacity Attributes

Scheduling Coordinator: Seller/Seller’s designated third party.

Development Security and Performance Security:

Development Security: \$90/kW of Guaranteed Capacity.

Performance Security: \$105/kW of Guaranteed Capacity.

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Exhibits

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RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of _____, 2023 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

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

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

AGREEMENT

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

ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(d).

“**Adjusted Energy Production**” shall have the meaning set forth in Exhibit E.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternative Delivery Point**” means a Scheduling Point, as defined in the CAISO Tariff, other than the Delivery Point, that is agreed upon by Buyer and Seller.

“**Approved Meter**” means a CAISO-approved revenue quality meter or meters, or if a CAISO approved meter is not consistent with PTO requirements, then a PTO-approved meter or meters, together with a CAISO-approved or PTO-approved, as the case may be, data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

“**Authorized Auditors**” means representatives of Buyer who are authorized to conduct audits on behalf of Buyer.

“**Available Capacity**” means the capacity from Buyer’s Share of the Facility, expressed in whole MWs, that is available to generate Energy.

“**Balancing Authority**” has the meaning set forth in the CAISO Tariff.

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of thirty (30) days (*provided*, that such thirty (30) day period shall be extended to sixty (60) days if Seller is actively contesting the petition), (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Brown Act**” has the meaning set forth in Section 18.3.

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

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer’s Share**” means the percentage that is equal to the quotient of the Guaranteed Capacity divided by the Installed Capacity (or, prior to the Commercial Operation Date, the total nameplate capacity of the Facility in operation at the time), not to exceed one hundred percent (100%), as such percentage may change from time to time with changes to the Installed Capacity, if applicable.

“**Buyer’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

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

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

“CAISO Operating Instruction” has the same meaning as “Operating Instruction” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and, to the extent subject to approval by FERC, as approved by FERC.

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

“Capacity Attribute” means Buyer’s Share of any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver at a particular moment, including those that can be delivered to the CAISO Grid and that can be purchased and sold pursuant to the CAISO Tariff (e.g., Resource Adequacy Benefits).

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission, or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

“CEQA” means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq.

“Change of Control” means any circumstance in which the Ultimate Parent ceases to have control over Seller; *provided*, that, for the avoidance of doubt, it shall not be a Change of Control of Seller if the Ultimate Parent, itself or together with other Persons that would meet the requirements of the definition of Permitted Transferee, retains (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of Seller or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in Seller, or (b) the right to direct the policies or operations of Seller, so long as such right to direct the policies or operations of Seller is not subject to revocation or modification without the consent of the Ultimate Parent.

“Claim” has the meaning set forth in Section 15.4.

“COD Daily Delay Damages” means an amount equal to (a) the Development Security Amount, *divided by* (b) one hundred eighty (180).

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Compliance Actions**” has the meaning set forth in Section 3.12(b).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12(a).

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

“**Construction Daily Delay Damages**” means an amount equal to (a) the Development Security Amount, *divided by* (b) three hundred and sixty (360).

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” means \$59.50/MWh (with no escalation); provided, prior to the RA Guarantee Date, the Contract Price shall mean the lesser of (i) \$59.50 MWh and (ii) the LMP in the Day-Ahead Market at the Delivery Point plus the REC Price.

“**Contract Revenues**” has the meaning set forth in Section 4.5(b).

“**Contract Term**” has the meaning set forth in Section 2.2(a).

“**Contract Year**” means a period of twelve (12) consecutive months, with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement, excluding attorneys’ fees.

“**Court**” has the meaning set forth in Section 15.4.

“**Cover Sheet**” means the cover sheet to this Agreement.

“**COVID-19**” means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, or the efforts of a Governmental Authority to combat or mitigate such disease.

“**CPRA**” has the meaning set forth in Section 18.3.

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

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 19-02-022, 20-06-002, 20-06-031, and any other existing or subsequent decisions, resolutions or rulings related to the Resource Adequacy Program or any successor program, as may be amended from time to time by the CPUC.

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

“Curtailmnt Order” means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction, to curtail deliveries of Energy from the Facility for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

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

(c) a curtailment ordered by CAISO or a Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Participating Transmission Owner.

“Curtailmnt Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation or deliveries of Delivered Energy from the Facility pursuant to a Curtailmnt Order. Curtailmnt Period shall not include periods during which Seller reduces generation as a result of a Market Curtailmnt Period.

“Damage Payment” means the dollar amount that equals the Development Security Amount less the amount of any Delay Damages paid by Seller to Buyer hereunder.

“Day-Ahead Forecast” means Buyer’s Share of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses and subject to the Hourly Delivery Cap, for each hour of the immediately succeeding day, based on a forecasting methodology to determine the potential generation of the Facility as a function of Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Industry Practice; *provided*, that, for the avoidance

of doubt, market conditions and pricing shall not be factored in such determination of the potential generation of the Facility; provided further that a Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately succeeding day, each succeeding non-Business Day and the next Business Day.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Energy” means Buyer’s Share of the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Market Curtailment Period, which amount shall be determined by Seller in a commercially reasonable manner based upon prevailing wind speeds, manufacturer-provided wind turbine power curves (or reasonable substitutes therefor), availability information, and other relevant information to the extent applicable (with supporting information provided to Buyer), less the amount of Delivered Energy during the Market Curtailment Period; *provided*, that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Delay Damages” means Construction Daily Delay Damages and COD Daily Delay Damages.

“Delayed WREGIS Certificates” has the meaning set forth in Section 4.8(d).

“Delivered Energy” means, in any Settlement Period or Settlement Interval, as applicable, (a) Buyer’s Share of the Energy produced by the Facility and delivered to the Delivery Point as measured in MWh by the Approved Meter, net of all Electrical Losses (other than Electrical Losses that are reflected in the meter readings) and Station Use, or (b) if the Facility output delivered to the Delivery Point is reduced at Seller’s direction in any Settlement Period or Settlement Interval, as applicable, that is not during a Curtailment Period or Market Curtailment Period, but a portion of the Facility equal to or greater than the Guaranteed Capacity remains online and capable of delivering Facility output to the Delivery Point, then Delivered Energy for such Settlement Period or Settlement Interval, as applicable, will be equal to Buyer’s Share of the total Energy that the Facility would have been able to produce and deliver to the Delivery Point if the Facility output was not so reduced (based upon prevailing wind speeds, manufacturer-provided wind turbine power curves (or reasonable substitutes therefor), availability information, and other relevant information to the extent applicable (with supporting information provided to Buyer)), and, in each case of (a) and (b), subject to the Hourly Delivery Cap.

“Delivery Point” has the meaning set forth in Exhibit A.

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

“**Development Security**” means, at Seller’s option (a) cash and/or (b) a Letter of Credit, in the Development Security Amount.

“**Development Security Amount**” means the Development Security amount required to be provided by Seller, as set forth on the Cover Sheet.

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

“**Dynamic Schedule**” has the meaning set forth in the CAISO Tariff.

“**Dynamic Transfer**” means either a Pseudo-Tie or a Dynamic Schedule.

“**E-Tag**” has the meaning set forth in the CAISO Tariff.

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

“**Effective Date**” has the meaning set forth on the Preamble.

“**EIRP**” means “Eligible Intermittent Resource Protocol” as described in Appendix Q of the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

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

“**Energy**” means electrical energy, measured in MWh.

“**Energy Replacement Damages**” has the meaning set forth in Exhibit E.

“**Environmental Laws**” means any federal, state or local laws (including common law), statutes, ordinances, rules, regulations, binding orders, injunctions or judgments pertaining to pollution or the presence of or release of Hazardous Materials on, under or about the Site.

“**EPC Contract**” means Seller’s engineering, procurement and construction contract for the Facility.

“**Event of Default**” has the meaning set forth in Section 11.1.

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

“**Expected Energy**” means the quantity of Energy (with associated Green Attributes) that Seller expects to be able to deliver to Buyer at the Delivery Point during each Contract Year in the quantity specified on the Cover Sheet, as such amount may be revised by Seller in a Notice to Buyer indicating the final amount on or before the Commercial Operation Date.

“**Facility**” means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

“**Fitch**” means Fitch Ratings, Inc., or its successor.

“**Floor Price**” means (a) for the period during which Seller is eligible to obtain PTCs and for that portion of the Delivered Energy or Deemed Delivered Energy, as the case may be, to which PTC eligibility applies, the amount, on a dollar per MWh basis, equal to the PTC value that Seller is eligible to earn in respect of Delivered Energy from the Facility at the time *multiplied by* negative one (-1), or (b) for all other periods and portions of Delivered Energy or Deemed Delivered Energy, zero dollars per MWh (\$0/MWh), or a different dollar amount per MWh elected by Buyer, *provided*, that Buyer shall provide at least ten (10) Business Days advance Notice of such election to Seller, and Buyer shall modify the Floor Price no more than once per calendar quarter; *provided further*, the Floor Price may be set lower than the amount set forth in this definition pursuant to Section 4.3(b).

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“**Future Environmental Attributes**” means any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other Law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by a wind generation facility as opposed to from a conventional generation resource.

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

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or

parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and WREGIS; *provided, however*, that “Governmental Authority,” as such term is used in this Agreement in connection with Seller’s obligations to comply with Law or bear Taxes, shall not include Buyer to the extent that Buyer’s acts or omissions would impose incremental burdens on Seller or Seller’s performance under this Agreement or limit or deprive Seller of any of Seller’s rights or benefits under this Agreement.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, named, registered, created, measured, allocated, or validated, that are attributable to the Delivered Energy or Replacement Energy or the emissions or other characteristics of the Delivered Energy or Replacement Energy or their displacement of conventional or other types of Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction, ownership or operation of the Facility and other financial incentives associated therewith, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“**Green Tag**” means a certificate or other instrument recognized by a Governmental Authority, with one Green Tag representing the Green Attributes associated with one (1) MWh of Energy generated by the Facility.

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

“**Guaranteed Capacity**” has the meaning set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**Guaranteed Construction Start Date**” has the meaning set forth on the Cover Sheet.

“**Guaranteed Energy Production**” has the meaning set forth in Section 4.7.

“Guaranteed RA Amount” means Buyer’s Share of the amount of Resource Adequacy Benefits available from the Facility in accordance with the rules of the CPUC and the CAISO. Under the applicable rules and requirements of the CPUC and CAISO in effect as of the Effective Date, the Parties expect the Guaranteed RA Amount to be Buyer’s Share of the Net Qualifying Capacity of the Facility, subject to reductions in the amount of Resource Adequacy Benefits available from the Facility that may result from Planned Outage, Forced Facility Outage, System Emergency, Curtailment Order, Force Majeure Event, or operation of the Facility consistent with the Operating Restrictions and Prudent Industry Practice.

“Hazardous Materials” means any hazardous substances (including petroleum (including crude oil or any fraction thereof), pollutants, contaminants, wastes, petroleum wastes, radioactive materials, hazardous wastes, toxic substances, or asbestos or any materials containing asbestos) regulated under any Environmental Law.

“Hourly Delivery Cap” means the maximum delivery rate of Energy and associated Renewable Energy Credits and Green Tags delivered to the Delivery Point and sold to Buyer in any given hour under this Agreement, which amount shall be equal to Buyer’s Share *multiplied by* 2,131 MW; provided, that the Hourly Delivery Cap shall never exceed 100 MW.

“Import Capability” means that portion of the Maximum Import Capability (as defined in the CAISO Tariff) at the Delivery Point or Alternative Delivery Point, if applicable, allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed RA Amount.

“Indemnified Party” has the meaning set forth in Section 16.1(a).

“Indemnifying Party” has the meaning set forth in Section 16.1(a).

“Installed Capacity” means the nameplate capacity of the Facility at the point of interconnection (which point of interconnection is specified in the Interconnection Agreement), as evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto, as it may be updated from time to time by delivery of a subsequent certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto.

“Inter-SC Trade” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the PTO’s Transmission System, and pursuant to which any Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the PTO’s Transmission System in order to meet the terms and conditions of this Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“**Law**” means any applicable federal, state or local law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority, including those pertaining to electrical, building, zoning, Environmental Laws, and occupational safety and health requirements.

“**Legal Opinion**” means an executed original of a written legal opinion of Sheppard Mullin Richter & Hampton LLP, counsel for Seller, or other counsel reasonably acceptable to Buyer, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among others, the enforceability and due authorization of this Agreement, dated as of the Effective Date.

“**Lender**” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or Tax Equity Financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing Interest Rate protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, and (b) in a form substantially similar to the letter of credit set forth in Exhibit I or as otherwise reasonably acceptable to the Party that is the beneficiary of the Letter of Credit.

“**Licensed Professional Engineer**” means either (i) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in New Mexico, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (ii) a person acceptable to Buyer in its reasonable judgment.

“**LMP**” means “**Locational Marginal Price,**” which has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party,

including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Market Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Delivered Energy during a Settlement Period or Settlement Interval in which both the LMP in the Day-Ahead Market and the LMP in the Real-Time Market at the Delivery Point are less than the Floor Price; *provided*, that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

“**Master Data File**” has the meaning set forth in the CAISO Tariff.

“**Milestones**” means the development activities and dates associated therewith set forth on the Cover Sheet.

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.4(b)(ii).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour measured in alternating current.

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

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

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

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service or electronic communication (including email or other electronic means).

“**Notification Deadline**” has the meaning set forth in Section 3.8(c).

“**Operating Restrictions**” means the operational characteristics of the Facility set forth in Exhibit K.

“Outside Commercial Operation Date” has the meaning set forth on the Cover Sheet, which date shall be extended on a day-for-day basis due to any delays caused by Buyer breach of this Agreement.

“Owner” has the meaning set forth in Section 2.3.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains the Transmission System or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“Parties” has the meaning set forth in the Preamble.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” has the meaning set forth in Section 4.7.

“Performance Security” means, at Seller’s option (i) cash or (ii) a Letter of Credit, in the Performance Security Amount.

“Performance Security Amount” means the amount of the Performance Security amount required to be provided by Seller, as set forth on the Cover Sheet.

“Permitted Extension” has the meaning set forth in Exhibit B.

“Permitted Transferee” means an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(e) The sum of (i) the tangible net worth of such entity, plus (ii) unfunded capital commitments to such entity (if any), shall equal an aggregate amount of not less than two hundred million dollars (\$200,000,000); or such entity shall have a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s;

(f) At least three (3) years of experience in the ownership and operations of power generation facilities with an aggregate nameplate capacity of at least 300 MW, or has retained a third-party with such experience to operate the Facility; and

(g) Such entity is not at the time of transfer in active litigation against Buyer with an amount in dispute of more than two million dollars (\$2,000,000).

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

“Planned Outage” means any planned outage or derate of the Facility.

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

“Product” has the meaning set forth on the Cover Sheet.

“Production Tax Credits” or **“PTCs”** means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

“Progress Report” means a progress report including the items set forth in Exhibit C.

“Project” has the same meaning as “Facility”.

“Project Bifurcation” has the meaning set forth in Section 2.4.

“Project Transition” has the meaning set forth in Section 2.4.

“Prudent Industry Practice” means the practices, methods and standards of professional care, skill and diligence engaged in, approved or used by a significant portion of the utility-scale wind energy industry for facilities of similar size, type and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety and environmental protection standards, applicable codes, and standards of economy and expedition. Prudent Industry Practice is not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Pseudo-Tie” has the meaning set forth in the CAISO Tariff.

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy from the Facility at the time, grossed up on an after tax basis at the marginal combined federal and New Mexico state corporate tax rate, but failed to earn as a result of Market Curtailment Period, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination.

“QRE” has the meaning set forth for “Qualified Reporting Entity” in the WREGIS Operating Rules.

“RA Deficiency Amount” has the meaning set forth in Section 3.8(e).

“RA Deficiency Amount Cap” means the maximum RA Deficiency Amount Seller shall pay to Buyer pursuant to Section 3.8(e), on a \$ per kW-month basis and as set forth in the table below:

Month	RA Deficiency Amount Cap (\$/kW-month)
January – April	\$1.50
May	\$3.75
June	\$8.25
July	\$18.75
August	\$21.00
September	\$18.75
October	\$8.25
November	\$3.75
December	\$1.50

“**RA Guarantee Date**” means the earlier of (i) the date that Seller begins providing Capacity Attributes from the Facility, or (ii) the date that is sixty (60) days following the Commercial Operation Date; *provided, however*, that the RA Guarantee Date shall be automatically extended on a day-for-day basis for each day of delay in the CAISO’s determination that the Facility is capable of delivering Capacity Attributes to Buyer that is not caused by the fault or negligence of Seller.

“**RA Shortfall Amount**” has the meaning set forth in Section 3.8(e).

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

“**REC Price**” means the prevailing market price (expressed in \$/MWh) for RECs meeting the RPS requirements for Portfolio Content Category 1, determined by averaging quotes provided by Buyer from three (3) unaffiliated brokers *provided, however*, that if three (3) broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the REC Price shall be determined by averaging quotes provided by Buyer from two (2) unaffiliated brokers; *provided further*, that if at least two (2) broker quotes cannot be obtained, then the REC Price will be deemed equal to twenty dollars per MWh (\$20/MWh).

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

“**Recurring Certificate Transfers**” has the meaning set forth in the WREGIS Operating Rules.

“**Remedial Action Plan**” has the meaning in Section 2.7.

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

“**Renewable Energy Incentives**” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any

way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not included in the definition of “Green Attributes” or “Future Environmental Attributes”.

“**Replacement Energy**” means energy produced by the Facility or by an alternate facility that, in each case, at the time delivered to Buyer, qualifies as Portfolio Content Category 1, and has green attributes that have the same or comparable value, including with respect to the timeframe for retirement of such green attributes, if any, as the Green Attributes that would have been generated by the Facility and delivered to Buyer during the Contract Year for which the Replacement Energy is being provided.

“**Replacement Green Attributes**” means Renewable Energy Credits meeting the RPS requirements for Portfolio Content Category 1 of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Contract Year for which the Replacement Green Attributes are being provided.

“**Replacement PPA**” means each power purchase agreement entered into by Buyer, as purchaser thereunder, and the applicable Owner, as seller thereunder, pursuant to the terms of Section 2.4.

“**Replacement Product**” means (a) Replacement Energy and (b) Replacement Green Attributes provided pursuant to Section 4.7.

“**Replacement RA**” means Capacity Attributes provided by Seller to Buyer in accordance with Section 3.8(e)(ii).

“**Resource Adequacy Benefits**” means the rights and privileges attached to Buyer’s Share of the Capacity Attributes available from the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in the CPUC Decisions and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“**Resource Adequacy Requirement**” or “**RAR**” means the capacity procurement obligations established by the CPUC pursuant to the CPUC Decisions, or by CAISO or any other regional entity.

“**Resource Data Template**” has the meaning set forth in the CAISO Tariff.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“**Schedule**” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered in any given hour on any given day or days at a specified Delivery Point.

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

“**Security**” means, collectively, the Development Security and Performance Security.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“**Settlement Period**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“**Shared Facilities Agreement**” has the meaning set forth in Section 6.3.

“**Shortfall**” has the meaning set forth in Section 4.7.

“**Shortfall Cure Period**” has the meaning set forth in Section 4.7.

“**Showing Month**” means the calendar month of the Delivery Term that is the subject of Buyer’s compliance with the requirements of the CPUC for Buyer’s Resource Adequacy Requirements. For illustrative purposes only, pursuant to the applicable CPUC Decisions in effect as of the Effective Date, the monthly compliance showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date Certificate to Buyer in the form attached hereto as Exhibit H.

“**Site Control**” means that Seller, for the Delivery Term: (a) has ownership of the Site; (b) is the grantee, licensee, or lessee under one or more real property agreements that permit Seller to perform all of its obligations under this Agreement; or (c) has otherwise provided evidence satisfactory to Buyer of Seller’s exclusive right to control the Site so as to permit Seller to perform all of its obligations under this Agreement.

“**SQMD**” means the settlement quality meter data.

“**Station Use**” means:

(h) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(i) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"Subsequent Purchaser" has the meaning set forth in Section 18.6.

"SunZia Transmission Line" means that certain 3,000-MW high-voltage (+/-525-kV) transmission line originating at the Point of Interconnection (as defined in the Interconnection Agreement) in New Mexico and terminating near Phoenix, Arizona. The western terminus of the line will connect to the 500-kV Pinal Central Substation.

"Supply Plan" has the meaning set forth in the CAISO Tariff.

"System Emergency" means any condition that (a) requires, as determined and declared by CAISO, the PTO or a Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

"Tax Equity Financing" means, with respect to Seller, any transaction or series of transactions resulting in a tax equity investor receiving certain federal tax benefits as a result of capital contributions to Seller or an Affiliate of Seller.

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

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

"Test Energy" means Buyer's Share of (1) Energy delivered from the Facility (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date; and (2) associated Green Attributes including RECs that meet the RPS requirements for Portfolio Content Category 1.

"Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point, including the Participating Transmission Owner.

“**Transmission System**” means the transmission facilities operated by the Transmission Provider(s), now or hereafter in existence, which provide energy transmission service upstream to or downstream from the Delivery Point.

“**Ultimate Parent**” means Pattern Energy Group LP.

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

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

“**WREGIS Certificate Delivery Deadline**” has the meaning set forth in Section 4.8(d).

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

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

“**WREGIS Withhold Amount**” has the meaning set forth in Section 4.8(d).

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

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

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

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

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

ARTICLE 2

EFFECTIVE DATE; TERM; CONDITIONS PRECEDENT

2.1 **Effective Date.** This Agreement shall be effective as of the Effective Date. On or prior to the Effective Date, Seller shall deliver to Buyer the Legal Opinion together with an invoice, containing reasonable supporting information, for the cost of the Legal Opinion. Within thirty (30) days of receiving the Legal Opinion and associated invoice from Seller, Buyer shall reimburse Seller for the cost of the invoice, *provided, however*, that Buyer shall not be responsible for the cost of the Legal Opinion in excess of fifteen thousand dollars (\$15,000) in the aggregate.

2.2 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early

termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after expiration or termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to expiration or termination. In addition, (i) the confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the expiration or termination of this Agreement, (ii) all indemnity obligations shall remain in full force and effect until the earlier of (A) the expiration of the relevant statute of limitations and (B) eighteen (18) months following expiration or termination of this Agreement, (iii) all audit rights shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement, and (iv) Buyer’s obligation to return to Seller the Development Security and/or Performance Security less any amounts drawn in accordance with this Agreement shall remain in full force and effect following the expiration or termination of this Agreement.

2.3 **Facility Ownership.** Buyer acknowledges that, as of the Commercial Operation Date, the Facility will be owned by one or more of Seller’s Affiliates (each an “**Owner**”) that will be, in turn, owned by Seller, and the Facility will not be owned directly by Seller. As of the Commercial Operation Date, Seller will have, and throughout the Delivery Term Seller will maintain, such agreements with Seller’s Affiliates and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Owners (including in respect of Seller performing the obligation or causing Owners to perform the obligation). Seller will maintain its ownership of the Owners throughout the Delivery Term and will not sell or transfer Owners without Buyer’s consent, which consent shall not be withheld or delayed unreasonably.

2.4 **Replacement PPA Transition.** Notwithstanding the provisions of Section 2.3, Seller may, at any time during the Contract Term, elect by Notice to Buyer to both terminate this Agreement and either (x) cause each Owner to simultaneously enter into a Replacement PPA with Buyer in respect of the portion of the Facility (i.e., SunZia Wind North or SunZia Wind South) owned by such Owner (a “**Project Bifurcation**”), or (y) cause the Owner of either (i) SunZia Wind South, or (ii) SunZia Wind North, to enter into a Replacement PPA with Buyer solely in respect of its portion of the Facility (a “**Project Transition**”). Each Replacement PPA will be on the same terms and conditions as those set forth in this Agreement, except for those administrative changes that are necessary to effectuate the separation or transition of this Agreement into Replacement PPA(s) with the Owner or Owners, as applicable. The provisions that are to be changed include:

(a) the identity of Seller throughout shall be changed to reflect the identify of each Owner;

(b) subject to the potential adjustment of the Installed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the nameplate capacity of (i) each Owner’s portion of the Facility, in the case of a Project Bifurcation, or (ii) SunZia Wind South or SunZia Wind North, as applicable, in the case of a Project Transition (either the actual Installed Capacity, if the transition to the Replacement PPA(s) occurs after the final Installed Capacities have been determined under this Agreement, or the anticipated installed capacity at the time of the Project

Bifurcation or Project Transition, as applicable, if otherwise) shall be inserted in “Description of Facility” in the Cover Sheet;

(c) Exhibit A (Facility Description) shall be revised to reflect (i) each Owner’s portion of the Facility in the case of a Project Bifurcation, or (ii) a description of SunZia Wind South or SunZia Wind North, as applicable, in the case of a Project Transition;

(d) Exhibit J (Notices) shall be revised to reflect the appropriate information for each Owner signatory to the relevant Replacement PPA, as applicable; and

(e) All instances of “2,131 MW” in this Agreement shall be changed in each Replacement PPA, on a pro rata basis, to reflect the installed capacity of each Owner’s portion of the Facility relative to, as applicable, either the actual Installed Capacity, if the Project Bifurcation or Project Transition, as applicable, occurs after the final Installed Capacity has been determined, or the anticipated installed capacity at the time of the Project Bifurcation or Project Transition, as applicable, if otherwise.

(f) In the case of a Project Bifurcation:

(i) subject to the potential adjustment of the Guaranteed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Guaranteed Capacity in the Cover Sheet of each Replacement PPA shall be changed, on a pro rata basis, to reflect the installed capacity of each Owner’s portion of the Facility, as applicable (either the actual Installed Capacity, if the transition to the Replacement PPAs occurs after the final Installed Capacities have been determined, or the anticipated installed capacity at the time of the transition, if otherwise); *provided*, that, for the avoidance of doubt, the sum of the Guaranteed Capacities in the Cover Sheet in each Replacement PPA shall equal the Guaranteed Capacity in the Cover Sheet in this Agreement;

(ii) subject to the potential adjustment of the Expected Energy pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Expected Energy in the Cover Sheet shall be reduced on a pro rata basis to reflect the nameplate capacity and net capacity factor of each Owner’s portion of the Facility (either the actual Installed Capacity and net capacity factor when the final Installed Capacities have been determined or, if the final Installed Capacities have not yet been determined, the anticipated nameplate capacity and net capacity factor), as determined by Seller in its reasonable discretion; *provided*, that, for the avoidance of doubt, the sum of the Expected Energy amounts in the Cover Sheet in each Replacement PPA shall equal the Expected Energy amount in the Cover Sheet in this Agreement;

(g) In the case of a Project Transition:

(i) subject to the potential adjustment of the Guaranteed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Guaranteed Capacity in the Cover Sheet of the Replacement PPA shall equal the amount of the Guaranteed Capacity in the Cover Sheet in this Agreement;

(ii) subject to the potential adjustment of the Expected Energy pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Expected Energy in

the Cover Sheet of the Replacement PPA shall equal the amount of the Expected Energy in the Cover Sheet in this Agreement.

In addition: (1) subject to the potential adjustment of the Installed Capacity pursuant to the terms of this Agreement or any Replacement PPA, if the Installed Capacity has been determined in accordance with this Agreement as of the effective date of the Replacement PPA(s), the Installed Capacity shall be revised to reflect the corresponding amount of installed nameplate capacity associated with (i) each Owner's portion of the Facility in the case of a Project Bifurcation, or (ii) the installed nameplate capacity of SunZia Wind South or SunZia Wind North, as applicable, in the case of a Project Transition, (2) in the case of Project Bifurcation, contract values or requirements that are based on determinants that are changing as a result of such Project Bifurcation shall be adjusted on a pro rata basis under the Replacement PPAs to correspond to the changed determinants, including the amount of the Guaranteed Energy Production (which is set based on the Expected Energy) and the Development Security Amount and Performance Security Amount (which are each set based on the Guaranteed Capacity), and (3) Section 2.3 and this Section 2.4 shall no longer apply and shall not be included in the Replacement PPA(s).

If Seller elects to consummate a Project Bifurcation or a Project Transition, Seller shall include in its Notice to Buyer drafts of each Replacement PPA, as applicable, and a draft agreement providing for the termination of this Agreement. Buyer shall, within twenty (20) Business Days after its receipt of Seller's Notice, provide by Notice to Seller any comments on the draft Replacement PPA(s), as applicable, and the termination agreement, and the Parties shall, and Seller shall cause the Owners to, cooperate reasonably with each other to resolve any issues and enter into the Replacement PPA(s) and the termination agreement within forty-five (45) days after Seller's Notice. If the Replacement PPA(s) and the termination agreement are not executed within such forty-five (45) days, the Parties shall resolve their differences under the dispute resolution procedures set forth in Article 15.

Prior to or concurrently with execution of the Replacement PPA(s) and termination of this Agreement, each Owner shall deliver to Buyer substitute Development Security or Performance Security, as applicable, securing such Owner's obligations under the applicable Replacement PPA and otherwise complying with the terms of the Replacement PPA; *provided*, no substitute Development Security or Performance Security, as applicable, shall be required if the existing Security will remain in full force and effect as required by the applicable Replacement PPA. Upon execution of the Replacement PPA(s) and termination of this Agreement: (A) so long as Buyer has received substitute Development Security or Performance Security as referenced in the first sentence of this paragraph, Buyer shall return to Seller the replaced Development Security or Performance Security, as applicable; (B) Buyer and the Owners shall, and the Owners shall cause Seller to, reasonably cooperate to implement any additional administrative actions that may be necessary to effectuate the Project Bifurcation or Project Transition (including, for example, in connection with WREGIS or CAISO); and (C) Seller shall have no further obligations to Buyer and Buyer shall have no further obligations to Seller, except for those obligations associated with the period of time prior to the termination of this Agreement.

2.5 Obligations Prior to Delivery Term. Prior to commencement of the Delivery Term, Seller shall complete each of the following:

(a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibit F and Exhibit G;

(b) A Pseudo-Tie Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO, an agreement governing the terms of Dynamic Transfers between CAISO and the host Balancing Authority for the Facility, and a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between CAISO and Seller, if, with respect to each such agreement, it is required under the CAISO Tariff or for Seller to meet its obligations under this Agreement, shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

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

(d) Commissioning and completion of the Interconnection Facilities, SunZia Transmission Line, and any other transmission facilities necessary to deliver Energy produced by the Facility to Buyer at the Delivery Point has occurred;

(e) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, are not required by Law to be obtained prior to the commencement of operations and have been applied for and are reasonably expected to be received within ninety (90) days after commencement of operations) and all conditions thereof have been satisfied and shall be in full force and effect;

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

(g) Installed Capacity equal to at least ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Product to Buyer in accordance with this Agreement, as stated in the certificate in the form of Exhibit F delivered pursuant to clause (a) of this Section 2.5;

(h) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements pursuant to the WREGIS Operating Rules (that are reasonably capable of being completed prior to the Commercial Operation Date under the WREGIS Operating Rules), including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(i) Seller has obtained Site Control;

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

(k) Seller has paid Buyer for all Delay Damages due and owing under this Agreement, if any.

Upon request from Seller from time to time, Buyer shall confirm in writing the completion of those of the foregoing conditions that have been completed by Seller as of such request. Seller shall provide to Buyer such other information that is in the possession of Seller or its Affiliates or is reasonably available to Seller regarding the permitting, engineering, construction or operations of Seller, its subcontractors, or the Facility, and other data concerning Seller, its subcontractors, or the Facility that Buyer may, from time to time, reasonably request in writing in order to confirm completion of the foregoing conditions, subject to Seller's obligations of confidentiality to third parties with respect to such information.

2.6 **Progress Reports.** The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) Business Days after the close of (i) each calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and have regular meetings between representatives of Buyer and Seller to review such monthly reports and discuss the Facility's development and construction progress. The content of the Progress Report is set forth in Exhibit C. Seller shall also provide Buyer with any reasonably requested documentation (subject to availability and confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request. Buyer shall be entitled to provide such Progress Reports to any purchaser to whom Buyer resells the Product (or parts thereof); provided such purchaser shall have first executed a commercially reasonable non-disclosure agreement with Seller containing terms consistent with those in Article 18.

2.7 **Milestones.** Seller shall cause each Milestone to occur on or prior to the date set forth on the Cover Sheet therefor. If Seller misses any one (1) Milestone by more than ninety (90) days, then in addition to the rights and obligations set forth in Exhibit B, and except as a result of a Force Majeure Event or Buyer default, Seller shall submit to Buyer, within ten (10) Business Days after the ninetieth (90th) day after such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. So long as Seller is in compliance with its obligations under this Section 2.7, its failure to meet any Milestone shall not be a default under this Agreement; *provided, however*, the foregoing shall not limit the Parties obligations, liabilities, or rights under Exhibit B, including Seller's obligation to pay Delay Damages as provided therein and Buyer's termination rights provided therein.

2.8 **Outside Commercial Operation Date.** If Commercial Operation is not achieved by the Outside Commercial Operation Date, and either (i) any delay, or combination of delays, set

forth in the definition of “Permitted Extension” is sufficient in and of itself to result in failure to achieve Commercial Operation by the Outside Commercial Operation Date, then either Party may terminate this Agreement upon Notice to the other Party, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party; or (ii) failure to achieve Commercial Operation by the Outside Commercial Operation Date is due, in whole or in part, to any reason other than any delay or combination of delays set forth in the definition of “Permitted Extension”, then Buyer may terminate this Agreement upon Notice to Seller, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for the payment by Seller, as liquidated damages, of the Damage Payment and those obligations that survive expiration or termination as described in Section 2.2(b); *provided*, that if Buyer does not terminate this Agreement as permitted pursuant to clause (ii) above within ninety (90) days after the Outside Commercial Operation Date, Seller may so terminate this Agreement upon Notice to Buyer, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for the payment by Seller, as liquidated damages, of the Damage Payment and those obligations that survive expiration or termination as described in Section 2.2(b). The Outside Commercial Operation Date shall be extended on a day-for-day basis for delay caused by Buyer breach or default of its obligations under this Agreement, but for no other reason, including due to Force Majeure Event.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all the Product produced by or associated with Buyer’s Share of the Installed Capacity of the Facility, subject to the Hourly Delivery Cap. The sale by Seller and purchase by Buyer of Delivered Energy hereunder shall be for resale. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Seller will follow Buyer’s instructions with respect to providing any resold Capacity Attributes to third parties purchasing such Capacity Attributes from Buyer, to the extent such instructions are reasonable and consistent with Seller’s obligations under this Agreement. Buyer shall notify Seller in writing of any resale of Capacity Attributes no later than ten (10) Business Days before the Notification Deadline for the applicable Showing Month. Subject to Buyer’s obligations to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point or Alternative Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, subject to the terms and conditions of this Agreement, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes attributable to the Delivered Energy and Replacement Energy.

3.3 **Compensation.**

(a) Delivered Energy. For each MWh of Delivered Energy and Replacement Energy in each Settlement Period, Buyer shall pay Seller the difference of (x) the Contract Price minus (y) the LMP in the Day-Ahead Market at the Delivery Point; *provided*, that:

(i) if the LMP in the Day-Ahead Market at the Delivery Point is less than the Floor Price, then (x) if the LMP in the Real-Time Market at the Delivery Point is greater than or equal to the Floor Price, Buyer shall pay for Delivered Energy and Replacement Energy the difference of (1) the Contract Price minus (2) the LMP in the Real-Time Market at the Delivery Point, or (y) if the LMP in the Real-Time Market at the Delivery Point is less than the Floor Price, Buyer shall pay for Delivered Energy and Replacement Energy (if any) the difference of (1) the Contract Price minus (2) the Floor Price; and

(ii) if the applicable calculation set forth in this Section 3.3(a) results in a negative value, Seller shall pay Buyer the absolute value of such result.

As between Buyer and Seller hereunder, Seller shall be responsible for reporting the Energy delivered to the CAISO in its FERC electronic quarterly reports.

(b) Deemed Delivered Energy. For each Settlement Period during the Delivery Term, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy. In addition, during the period in which Seller is receiving the PTC for the Delivered Energy, Buyer shall also pay the PTC Amount for all Deemed Delivered Energy; *provided, however* Buyer shall not pay the PTC Amount for Deemed Delivered Energy that was generated by the Facility and sold to a third party pursuant to Section 4.5(b). Notwithstanding the foregoing, (i) Seller shall receive no compensation from Buyer, including for the PTC Amount, for Deemed Delivered Energy to the extent that Seller is required to reduce delivery of Delivered Energy or would be required to reduce delivery of Deemed Delivered Energy as a result of any Curtailment Period, and (ii) during the period in which Seller is eligible to obtain PTCs for the Delivered Energy, Buyer shall not be obligated to pay for more than 20,000 MWh of Deemed Delivered Energy in any Contract Year.

(c) Excess Deliveries. If, at any point in a Contract Year, the amount of Delivered Energy plus Deemed Delivered Energy exceeds 115% of the Expected Energy for such Contract Year, Buyer has the option to notify Seller that it will not accept deliveries of Product for the remainder of the Contract Year. If Buyer exercises such option via written Notice to Seller, Seller's obligation to deliver and Buyer's obligation to purchase Product will stop two (2) Business Days following the receipt of such Notice until the first day of the next following Contract Year.

(d) Full Compensation. Except as expressly set forth herein, including but not limited to payments for Test Energy delivered pursuant to Section 3.7, the amounts set forth in this Section 3.3 shall serve as Buyer's exclusive payment obligation to Seller in respect of Product sold by Seller and purchased by Buyer hereunder.

3.4 [Reserved]

3.5 Ownership of Renewable Energy Incentives. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing

the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created or come into existence after the Effective Date. Seller shall promptly notify Buyer upon becoming aware of the existence of Future Environmental Attributes, and Buyer shall have the right to notify Seller upon becoming aware of the existence of Future Environmental Attribute. Subject to the final sentence of this Section 3.6(a), Buyer shall have the exclusive right to claim Buyer's Share of any Future Environmental Attributes by providing Notice to Seller. If Buyer provides such Notice, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, except that if Seller provides Future Environmental Attributes to any other Person, Buyer shall only be responsible for paying its pro rata share of the registration and ongoing compliance costs for the Future Environmental Attributes received by Buyer relative to the total Future Environmental Attributes provided by Seller to Buyer and other Persons. There shall be no increase in the Contract Price as a result of the provision of Buyer's Share of the Future Environmental Attribute to Buyer. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Buyer's Share of the Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) the determination of any additional costs to be borne by Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller may, at its option, provide Notice of such Test Energy generation and, upon such Notice, Buyer may, at its option, purchase Test Energy at seventy-five percent (75%) of the Contract Price. If Buyer does not agree to purchase Test Energy, Seller may sell such Test Energy, and any related products or attributes, to third parties and keep any and all revenues (and bear any and all costs) associated with such sales.

3.8 **Capacity Attributes.**

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

(b) Throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits at the Delivery Point. Throughout the Delivery Term, subject to Section 3.8(d), Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer. Resource Adequacy Benefits shall be deemed delivered and received by Buyer when the CAISO's Customer Interface for Resource Adequacy ("**CIRA**") shows a Supply Plan matching the relevant Supply Plan submitted by Seller and accepted by CAISO.

(c) For the duration of the Delivery Term from and after the RA Guarantee Date, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement, including submitting Supply Plans in accordance with CAISO and CPUC requirements. For illustrative purposes only, as of the Effective Date, the applicable compliance deadlines ("**Notification Deadlines**") are as follows: (A) forty-five (45) days prior to the Showing Month covered by the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Delivery Term. Seller shall deliver Notice to Buyer of the Resource Adequacy Benefits that Seller expects to include in each Supply Plan at least thirty (30) days prior to the CAISO submission deadline for each annual Supply Plan and at least thirty (30) days prior to the CAISO submission deadline for each monthly Supply Plan; *provided*, if Seller becomes aware of any change to the Resource Adequacy Benefits that Seller is able to include in any Supply Plan after delivering any such Notice and prior to the applicable CAISO submission deadline for such Supply Plan that is due to Planned Outage, Forced Facility Outage, System Emergency, Curtailment Order, Force Majeure Event, or compliance with the Operating Restrictions or Prudent Industry Practice (or any combination of the foregoing factors), then Seller shall provide Notice to Buyer of any such change as soon as reasonably practicable.

(d) Buyer acknowledges that it will be required to take various actions from time to time, including obtaining Import Capability at the Delivery Point, in order to make use of the Capacity Attributes associated with the Product.

(e) For any calendar month for which Seller fails to deliver to Buyer Resource Adequacy Benefits in the amount of Buyer's Share of the then-applicable Net Qualifying Capacity of the Facility, unless such failure is due to the actions or omissions of Buyer, including but not limited to Buyer's failure to obtain adequate rights pursuant to clause (d) above:

(i) Seller shall be liable for liquidated damages ("**RA Deficiency Amount**") in the amount of the product of the RA Shortfall Amount *multiplied by* the \$/kW-month Replacement RA values shown in Table 1 below, where the "**RA Shortfall Amount**" is defined as (A) the Guaranteed RA Amount, *minus* (B) any Resource Adequacy Benefits that Seller does not deliver to Buyer due to the actions or omissions of Buyer (including but not limited to Buyer's failure to obtain adequate rights pursuant to clause (d) above), *minus* (C) the Resource Adequacy

Benefits of the Facility delivered to Buyer for such month, expressed in kW, *minus* (D) any Replacement RA delivered for such month:

Replacement RA value	
Month	\$/kW-month
Jan	\$1.50
Feb	\$1.50
Mar	\$1.50
Apr	\$1.50
May	\$3.75
Jun	\$8.25
Jul	\$18.75
Aug	\$21.00
Sep	\$18.75
Oct	\$8.25
Nov	\$3.75
Dec	\$1.50

(ii) Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall Amount, *provided*, that any Replacement RA is communicated by Seller to Buyer with Replacement RA information in a Notice to Buyer by the date that is ten (10) Business Days prior to the deadline for the compliance showing for the applicable Showing Month, and provided further that such Replacement RA shall comply with the requirements of CPUC Decision 21-06-035, but only to the extent required for the Product purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under Decision 21-06-035, as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties. Seller's delivery of Replacement RA shall be considered to be delivery of Capacity Attributes for all purposes of this Agreement, including payment and invoicing.

3.9 CEC Certification and Verification. Seller shall take all commercially reasonable steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility. Seller shall obtain CEC pre-certification prior to the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Seller shall use commercially reasonable efforts to ensure that the Facility (i) obtains final CEC Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date, and (ii) maintains CEC Certification and Verification throughout the remainder of the Delivery Term. Seller shall be deemed to have complied with the requirements of this Section 3.9 if Seller applies for final CEC Certification and Verification within thirty (30) days after the Commercial Operation Date and thereafter timely responds to any questions from the CEC. Seller shall keep Buyer reasonably apprised of the status

of the CEC Certification and Verification, including notifying Buyer as soon as reasonably practicable upon receipt of notice of any change in CEC Certification and Verification.

3.10 **Non-Modifiable Terms.**

(a) **Eligibility.** Seller (including, if applicable, its successors) represents and warrants that throughout the Delivery Term of this Agreement that: (a) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (b) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. Subject to Section 3.12(f), to the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(b) **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.

(c) **Transfer of Renewable Energy Credits.** Seller (including, if applicable, its successors) represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer qualify as Portfolio Content Category 1 and otherwise conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. Subject to Section 3.12(f), to the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(d) **Tracking of RECs in WREGIS.** Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery of Product under this Agreement.

3.11 **California Renewables Portfolio Standard.** Upon request of Buyer, Seller shall provide records or other information reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Agreement, including, subject to Section 3.12, scheduling or delivering information necessary to meet the requirements of the California Renewables Portfolio Standard for the Product. Subject to Section 3.12, Seller represents and warrants the Product meets the requirements set forth in PUC Code 399.16(b)(1) and the RPS compliance requirements for Portfolio Content Category 1 as set forth in CPUC Decision 11-12-052.

3.12 **Compliance Expenditure Cap.**

(a) Notwithstanding anything herein to the contrary, if Seller establishes to Buyer's reasonable satisfaction that a change in Law that occurs after the Effective Date would require Seller to incur costs in excess of those which could reasonably have been contemplated as of the Effective Date in order to comply with Seller's obligations under this Agreement with

respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) the items listed in (i) through (iv) below, then the Parties agree that the maximum amount of such excess costs and expenses that Seller shall be required to bear during any Contract Year shall be capped at ten thousand dollars (\$10,000) per MW of Guaranteed Capacity and in the aggregate during the Delivery Term shall be capped at twenty five thousand dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"):

(i) CEC Certification and Verification;

(ii) Green Attributes;

(iii) WREGIS; and

(iv) Capacity Attributes; *provided*, that any costs and/or expenses of compliance with requirements in connection with Capacity Attributes which (a) are instituted by the governing body of Buyer, (ii) differ from CAISO or CPUC rules, and (b) would result in incremental compliance costs to Seller, shall not count toward the Compliance Expenditure Cap; Seller shall use good faith efforts to comply with such requirements at Buyer's reasonable request *provided*, that Buyer shall bear, pay, and/or reimburse to Seller all such costs and expenses.

(b) Any actions required for Seller to comply with its obligations set forth in the first paragraph of this Section 3.12 (excluding the costs described in the proviso to clause (a)(iv) above), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligations to take, and no liability for a failure to take, such Compliance Actions for the remainder of the Contract Term.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by Buyer and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs for less than all of the costs that exceed the Compliance Expenditure Cap, Seller shall only be obligated to take the Compliance Actions covered by the Accepted Compliance Costs.

(f) The term “commercially reasonable efforts” as used in Section 3.10 means efforts consistent with and subject to this Section 3.12.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Delivered Energy through Dynamic Transfers and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy and Replacement Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Delivered Energy and Replacement Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to (i) RECs shall pass and transfer from Seller to Buyer upon the transfer of such RECs in accordance with the WREGIS Operating Rules, and (ii) all other Green Attributes shall pass and transfer from Seller to Buyer upon their creation.

4.3 Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller shall bid Buyer’s Share of the Facility’s forecasted generation into the Day-Ahead Market at a price that is no higher than the Floor Price. Seller shall bid the Day-Ahead Forecast into the Day-Ahead Market at the Floor Price, and Seller shall bid into the Real-Time Market at the Floor Price (i) any generation above the Day-Ahead Forecast that is awarded a Day-Ahead Schedule or (ii) all generation in the event that there is no Day-Ahead Schedule.

(b) Floor Price. The Parties agree to use good faith efforts to work together to permit Buyer, after the period during which Seller is eligible to obtain PTCs for Delivered Energy, to adjust the Floor Price on a quarterly basis upon not less than ten (10) Business Days’ Notice; *provided, however*, that Buyer shall not have the right to set the Floor Price at a price that is higher than zero dollars per MWh (\$0/MWh).

(c) CAISO Costs and Revenues. Seller shall be responsible for all CAISO costs (including penalties, imbalance energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, imbalance energy payments, and other payments), including costs and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility.

(d) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

4.4 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Industry Practice.

(a) Seller or Seller's Scheduling Coordinator shall Schedule Buyer's Share of the Energy from the Facility and Replacement Energy in accordance with the CAISO Tariff, NERC, WECC operating policies and criteria, and any other applicable guidelines, and the scheduling and forecasting procedures provided in or developed under this Section 4.4. Seller, at its own cost, shall install metering, telemetry, and control equipment in accordance with Article 7 and the CAISO Tariff, as applicable, so as to be able to deliver Energy to the Delivery Point, Schedule Delivered Energy and Replacement Energy, and respond to CAISO, Transmission Provider, or Scheduling Coordinator's dispatch orders.

(b) Seller or Seller's authorized representative shall provide the following non-binding forecasts, all in accordance with the requirements of the CAISO Tariff:

(i) Annual Forecast of Energy. No less than forty-five (45) days before (a) the first day of the first Contract Year of the Delivery Term and (b) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of Delivered Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit D, or as reasonably requested by Buyer.

(ii) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter fifteen (15) days before the compliance deadline for the monthly Supply Plan for each Showing Month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of Delivered Energy and Available Capacity, by hour, for each day of the following month in a form reasonably requested by Buyer ("Monthly Delivery Forecast").

(iii) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Delivered Energy and Replacement Energy during each Settlement Period, a copy (a) a non-binding forecast of its best estimate of Available Capacity and (b) the Day-Ahead Forecast, in each case, for each hour of the immediately succeeding day.

(iv) Real-Time Forecasts. During the Delivery Term, Seller shall, or shall cause its authorized representative to, notify Buyer via email, followed by a telephone call, or other mutually acceptable method, of any changes to the Day-Ahead Forecast resulting from changes of fifteen (15) MW or more in available Installed Capacity or when hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, differs by more than fifteen (15) MWh, as applicable, of the amount set forth in the Day-Ahead Forecast, in each case, due to Forced Facility Outage or Force Majeure Event, as soon as reasonably possible, but no later than sixty (60) minutes prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the available Installed Capacity or, if applicable, the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, changes by at least fifteen (15) MW or fifteen (15) MWh, as applicable, due to Forced Facility Outage or Force Majeure Event as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller shall notify Buyer as soon as reasonably possible. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of becoming aware of the Forced Facility Outage. Any Notice delivered under this Section 4.4(b)(iv) shall include the reason for the outage, if known, and an estimated duration of the outage. Once the outage has ended, Seller or Seller's authorized representative shall notify Buyer that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in reasonable detail.

(c) Seller shall develop and install all communications systems necessary for the operation of the Facility in accordance with Prudent Industry Practice, including communications systems that provide for the receipt and following of automated dispatch instructions from the CAISO. Throughout each Settlement Period, Seller shall provide to Buyer the following:

(i) Read only access to the following CAISO applications: ADS, CMRI and OMS or any replacement applications;

(ii) Read only access to the Facility's SQMD at the Delivery Point directly through the CAISO market results interface or any future replacement system that provides CAISO SQMD; and

(iii) Such other information about the Facility as may be reasonably requested from time to time by Buyer.

4.5 Dispatch Down/Curtailment.

(a) General. Subject to Section 4.5(b), Seller agrees to reduce deliveries of the Energy produced by the Facility by the amount and for the period set forth in any Curtailment

Order; *provided*, that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Alternative Delivery Point/Third-Party Sales. In the event that, and for so long as, Seller is unable to Dynamically Transfer or deliver all or a portion of the Product to Buyer at the Delivery Point, but is able to Dynamically Transfer and deliver Product to Buyer at one or more Alternative Delivery Points, such Alternative Delivery Points shall be considered the Delivery Point under this Agreement. If Buyer and Seller fail to agree upon an Alternative Delivery Point, (i) Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period to one or more third party buyers to the extent that Seller may do so in compliance with Law and Prudent Industry Practice, and (ii) Seller shall use commercially reasonable efforts to sell and deliver some or all of the Product during Market Curtailment Periods at a positive price to the extent that Seller may do so in compliance with Law and Prudent Industry Practice. If Seller makes sales pursuant to clause (ii) above, Seller shall remit to Buyer all revenues, net of Seller's incremental costs associated with such sales, up to the product of the Contract Price and the amount of Product sold ("**Contract Revenues**"), and Seller shall be entitled to all revenues in excess of the Contract Revenues.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit E:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, *provided*, that Seller shall not schedule any Planned Outages that reduces the generation level of the Facility by at least ten percent (10%) of the Installed Capacity during the months of June, July, August, September or October other than such Planned Outages that must be scheduled during the foregoing months in accordance with Prudent Industry Practice, or that must be scheduled during the foregoing months to avoid damage to the Facility, for health and safety reasons, to maintain equipment warranties, or in accordance with manufacturer recommendations. On or before October 1 of each year, Seller shall provide Buyer with the scheduled maintenance for the Facility for the next calendar year.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage and shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of such outage.

(c) System Emergencies and Other Events. Seller shall be permitted to reduce deliveries of Product (i) during any period of System Emergency, (ii) pursuant to a Curtailment Order, (iii) during a Market Curtailment Period, (iv) during any period when the LMP in the Real-Time Market is less than the Floor Price (*provided*, that Seller shall not reduce the Delivered Energy, pursuant to this clause (iv), below the amount of the Day-Ahead Forecast that has been awarded a Day-Ahead Schedule), (v) during any Force Majeure Event, (vi) due to Prudent Industry Practice or (vii) otherwise pursuant to the terms of this Agreement, the Interconnection Agreement or the applicable tariff (including the CAISO Tariff) or as may be required under a Shared Facilities Agreement. Notwithstanding anything in this Agreement to the contrary, Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period or Market

Curtailment Period to one or more third-party buyers to the extent that Seller may do so in compliance with Law and Prudent Industry Practice, subject to Section 4.5(b).

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each period of two (2) consecutive Contract Years during the Delivery Term (such that the first Performance Measurement Period comprises Contract Years 1 and 2, the second Performance Measurement Period comprises Contract Years 2 and 3, and so on) ("Performance Measurement Period"). "Guaranteed Energy Production" means an amount of Product for each Performance Measurement Period, as measured in MWh, equal to one-hundred fifty percent (150%) of the average annual Expected Energy. The calculation will be performed once each Contract Year, beginning with the second anniversary of the Commercial Operation Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergencies, Buyer's failure to perform, Curtailment Periods, Market Curtailment Periods, and curtailments of Product during any period when the LMP in the Real-Time Market is less than the Floor Price in accordance with Section 4.6(c)(iv). For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer, which amount shall be determined by Seller in a commercially reasonable manner based upon prevailing wind speeds, manufacturer-provided wind turbine power curves (or reasonable substitutes therefor), availability information, and other relevant information to the extent applicable (with reasonable supporting information provided to Buyer), by reason of Force Majeure Events, System Emergencies, Buyer's failure to perform, Curtailment Periods, or Market Curtailment Periods ("Lost Output"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period (the difference between the Guaranteed Energy Production and the amount of Adjusted Energy Production during the applicable Performance Measurement Period, a "Shortfall"), Seller shall cure such Shortfall by using commercially reasonable efforts to provide Replacement Product to Buyer during the Contract Year immediately following the end of the Performance Measurement Period in which the Shortfall occurred (such period, the "Shortfall Cure Period"), *provided*, that any Replacement Product provided during the Shortfall Cure Period shall not be counted towards the Product delivered to Buyer for such prior Performance Measurement Period until such time as at least seventy five percent (75%) of the Expected Energy for the then-current Contract Year has been delivered to Buyer. If Seller does not cure the Shortfall within the Shortfall Cure Period, Seller shall pay Buyer Energy Replacement Damages for any remaining Shortfall calculated in accordance with Exhibit E after the conclusion of the applicable Shortfall Cure Period. If Seller provides Replacement Product and/or pays Buyer Energy Replacement Damages for a Shortfall that occurs during a given Performance Measurement Period, then deliveries of Energy for the first Contract Year of the following Performance Measurement Period shall be deemed to be equal to the greater of (i) seventy five

percent (75%) of the Expected Energy for such following Contract Year and (ii) the Delivered Energy plus Lost Output for such Contract Year.

4.8 **WREGIS.** Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy and Replacement Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall satisfy its obligations pursuant to Section 3.10(d) and Section 4.2(b) by fulfilling its obligations under Sections 4.8(a) through (f) below.

(a) Prior to the Commercial Operation Date, Seller shall (i) register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term and (ii) obtain access to the E-Tags associated with the Dynamic Transfers. Seller shall transfer the WREGIS Certificates using Recurring Certificate Transfers from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, including those costs associated with the registration, receipt of, and access to E-Tags for purposes of matching E-Tags, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. WREGIS Certificates must be matched with E-Tags associated with the Dynamic Transfers. WREGIS Certificates without matching E-Tags associated with Dynamic Transfers, will be rejected.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy and Replacement Energy for such calendar month as evidenced by the amounts corresponding to the Facility's metered data that match E-Tags associated with the Dynamic Transfers. Subject to delivery of Replacement Product, Seller shall ensure that no WREGIS Certificates are transferred to Buyer's WREGIS Account unless they are the result of Delivered Energy reflected in the Facility's metered data and matched with E-Tags associated with the Dynamic Transfers. If any WREGIS Certificates are transferred to Buyer's WREGIS Account that are unmatched with E-Tags associated with the Dynamic Transfers, whether or not due to an action or inaction by Seller, Seller shall include in its next invoice relating to such WREGIS Certificates, in accordance with Section 8.1(a), a data report showing all necessary E-Tag information required for satisfying the requirements of CEC Certification and Verification and the California Renewables Portfolio Standard related to those unmatched E-Tags.

(d) Due to the delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding anything in this Agreement to the contrary, including the delay set forth in the first sentence of this Section 4.8(d), Seller shall ensure that the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy and Replacement Energy for a Contract Year are delivered to Buyer's WREGIS Account on or before June 1 of the following Contract Year (the "**WREGIS Certificate Delivery Deadline**"). If any WREGIS Certificates associated with any Renewable Energy Credits corresponding to any Delivered Energy or Replacement Energy for a Contract Year are not transferred to Buyer's WREGIS Account by the WREGIS Certificate Delivery Deadline due to Seller's actions or inactions (such delayed WREGIS Certificates, the "**Delayed WREGIS Certificates**"), Buyer shall be entitled to withhold from future payments hereunder an amount equal to the lesser of (i) twenty dollars (\$20), or (ii) the REC Price (the "**WREGIS Withhold Amount**") per Delayed WREGIS Certificate, until the next occurring invoice following the transfer of the applicable Delayed WREGIS Certificates to Buyer's WREGIS Account. If any Delayed WREGIS Certificates are not transferred within twelve (12) months following the WREGIS Certificate Delivery Deadline, (a) Buyer shall be entitled to retain such related WREGIS Withhold Amounts and shall have no obligation to pay such amounts to Seller, notwithstanding any later transfer of additional Renewable Energy Credits into Buyer's WREGIS Account, and (b) if Buyer has not withheld amounts as of such date in a total amount equal to the product of any remaining Delayed WREGIS Certificates and the WREGIS Withhold Amount, then Seller shall include the difference between such total amount and the amount retained by Buyer in accordance with clause (a) in the next invoice delivered by Seller under Section 8.1 as a credit to Buyer and pay such amount to Buyer in accordance with Section 8.2; provided that Seller shall have no further obligation to deliver any Renewable Energy Credits associated with Delayed WREGIS Certificates that are settled pursuant to this sentence.

(e) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy and Replacement Energy in the same calendar month.

(f) If WREGIS (or any successor thereto) is no longer available to or fails to provide the services described in this Section 4.8, Seller shall, until such time as a substitute provider reasonably acceptable to both Parties is available to provide such services, continue to document the production of Renewable Energy Credits by delivering with each invoice to Buyer an attestation and bill of sale for Renewable Energy Credits during the preceding month in the form of attestation set forth as Exhibit M or as otherwise reasonably acceptable to Buyer. At the request of Buyer, the Parties shall execute all such documents and instruments and take such other action as are required to effect the transfer of the Renewable Energy Credits specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of the Renewable Energy Credits.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to (i) the Facility or (ii) the sale and delivery of Product to Buyer that are imposed on Product arising before the Delivery Point. Buyer shall pay or caused to be paid all Taxes on or with respect to the delivery to and purchase and use by Buyer of the Product that are imposed on Product at and after the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other Party for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, the exempted Party shall provide the other Party with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If the exempted Party does not provide such documentation, then such Party shall indemnify, defend, and hold harmless the other Party from any liability with respect to Taxes from which the exempted Party claims it is exempt. If Seller learns that any exemption applicable to Seller is lost at any time during the Contract Term, Seller shall be responsible for any additional Taxes incurred as a result of the loss of that exemption.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Industry Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit J Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared**

Facilities Agreements”) to be entered into among two or more of Seller, the Participating Transmission Owner, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter shall be installed at the switching station adjacent to the SunZia East Converter Station and maintained at Seller’s cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Industry Practice and CAISO or PTO requirements, as applicable. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Approved Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO or the PTO, as applicable, the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller, or Seller’s Scheduling Coordinator, shall cooperate with Buyer to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRIS-S) (or its successor) or directly from the Approved Meter at the Facility.

7.2 **Meter Verification.** Seller shall test the meter (i) in accordance with Prudent Industry Practice and CAISO or PTO requirements, as applicable, (ii) annually, if Seller has reason to believe there may be a meter malfunction, and (iii) upon Buyer’s reasonable request. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified fourteen (14) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), Seller shall notify CAISO and Buyer of such inaccuracy, provide such information as is necessary for CAISO to correct the quantity of Delivered Energy, and adjust prior invoices accordingly pursuant to Section 8.4.

ARTICLE 8 INVOICING AND PAYMENT; SECURITY

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer no later than fifteen (15) days after the end of the prior calendar month. Seller shall cause each invoice to provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy and Replacement Energy for each Settlement Period during the preceding month, including the amount of Delivered Energy and Replacement Energy as set forth in the first CAISO settlement statement for the prior month that includes meter data from the Approved Meter, the applicable Contract Price, and the LMP in the Day-Ahead Market and Real-Time Market at the Delivery Point for each Settlement Period; (b) a reconciliation of hourly meter data, E-Tag data and associated calculations, including the

lesser of each by hour, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (c) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags associated with the Dynamic Transfers; (d) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; (e) any other information required by this Agreement, and (f) the net amount owed by Buyer or Seller hereunder for the applicable calendar month pursuant to Section 8.6, taking into account all the amounts owed under this Agreement and the information provided in clauses (a) through (e). Seller shall cause each invoice to be in a reasonable format covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment**. The Party owing the net amount set forth in an invoice shall make payment by wire transfer or ACH payment to the applicable bank account included in Exhibit J. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. For the avoidance of doubt, no payment shall be due from Buyer in connection with monthly payments for Product prior to Seller's delivery of an invoice therefor in accordance with Section 8.1. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on a monthly interest rate of one percent (1%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years following the applicable payment or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Seller shall grant Buyer and the Authorized Auditors with reasonable access to copies of the accounting books and records pertaining to all invoices generated pursuant to this Agreement, subject to reasonable redaction by Seller for confidentiality. Such books and records shall be considered Confidential and subject to the provisions of Article 18. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times as may be reasonably requested by Buyer. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not be required to furnish the Authorized Auditors with any software.

8.4 **Payment Adjustments; Billing Errors**. Seller shall make good faith efforts to make payment adjustments in the next monthly invoice (but in no event later than sixty (60) days) after the occurrence of any of the following events: (i) Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or (ii) CAISO recalculates amounts due or owing in respect of prior periods, including any such recalculation due to an inaccuracy of any meter reading sufficient to require a payment adjustment

in accordance with Section 7.2; *provided, however* in no event shall Seller make such payment adjustment later than twelve (12) months following notice to Seller of such recalculation by CAISO. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until the date settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months after the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) days after such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12) month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all undisputed amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibit B and Exhibit E, interest, and payments or credits, including pursuant to Section 4.3(c), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (A) Seller's delivery of the Performance Security, or (B) sixty (60) days after expiration or termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement, so long as, in the case of clause (B), all payment obligations of Seller arising under this Agreement, including compensation for penalties, Damage Payment, indemnification payments or other damages shall have been paid in full (whether directly or indirectly such as through set-off or netting). If and to the extent that any portion of the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) indicates its intent not

to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iv) becomes Bankrupt, Seller shall notify Buyer of any of the foregoing circumstances, which Notice shall be given to Buyer within five (5) Business Days after obtaining knowledge of the occurrence of such event, and Seller shall have ten (10) Business Days after obtaining such knowledge in which to post substitute collateral that meets the requirements set forth in the definition of Development Security. Seller shall have no obligation to replenish the Development Security following any draws thereon by Buyer.

8.8 **Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If and to the extent that any portion of the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iii) becomes Bankrupt, Seller shall notify Buyer of any of the foregoing circumstances, which Notice shall be given to Buyer within five (5) Business Days after obtaining knowledge of the occurrence of such event, and Seller shall have ten (10) Business Days after obtaining such knowledge in which to post substitute collateral that meets the requirements set forth in the definition of Performance Security. Promptly, and in no event more than five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish any amounts drawn on the Performance Security such that the amount of the Performance Security is restored to the Performance Security Amount. Notwithstanding the other provisions of this Agreement, the Performance Security constitutes security for, but is not a limitation of, Seller's obligations under this Agreement.

8.9 **Financial Statements.**

(a) Buyer shall provide to Seller (i) within one hundred eighty (180) days following the end of each fiscal year during the Contract Term, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within ninety (90) days after the end of each of its first three fiscal quarters of each fiscal year during the Contract Term, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or International Financial Reporting Standards; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certifications, such unavailability shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification, and delivery of the statements.

(b) Buyer shall be deemed to have complied with the requirements of Section 8.9(a) to the extent that such financial statements and information of Buyer are published

and publicly accessible on Buyer's website at <https://riversideca.gov/>, which may be updated by Buyer upon Notice to Seller.

8.10 Security Requirements.

(a) Buyer may draw on the Security (i) at any time following Seller's failure to pay Delay Damages, Energy Replacement Damages, Capacity Damages, the RA Deficiency Amount, the Damage Payment, or any other liquidated damages provided for hereunder, in the amount of such Delay Damages, Energy Replacement Damages, Capacity Damages, the RA Deficiency Amount, the Damage Payment, or other liquidated damages, as applicable, in each case within ten (10) Business Days after Notice to Seller that applicable damages are due, so long as such liquidated damages are not the subject of a good faith dispute between the Parties in accordance with Section 8.5 (*provided*, if Buyer draws on the Security as specified in this Section 8.10(a)(i) to pay such damages, there shall be no Event of Default by Seller under Section 11.1(a)(i) in connection with payment of such damages), (ii) upon Seller's failure to make a Termination Payment to Buyer in accordance with Section 11.3, in the amount of the unpaid Termination Payment, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder in the amount of the unpaid payment, only if and to the extent such payment is not the subject of a good faith dispute between the Parties in accordance with Section 8.5, has been invoiced to Seller, and is past due after the expiration of all cure periods provided for herein, including pursuant to Section 11.1(a)(i). Seller shall, from time to time as reasonably requested by Buyer, 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 and enforceable under all requirements of Law the Security and the rights of Buyer with respect to such Security or Security.

(b) If the Development Security or Performance Security consists of a Letter of Credit that expires before the end of the Contract Term, Seller shall (i) cause the term of such Letter of Credit to be renewed or extended for additional consecutive terms of three hundred sixty (360) days or more (or, if shorter, the remainder of the Contract Term) no later than sixty (60) days prior to each such expiration date, and (ii) provide written proof of such renewal or extension to Buyer as soon as practicable thereafter, but in no event later than forty-five (45) days prior to the applicable expiration date. If Seller fails to comply with the foregoing sentence, Buyer may immediately draw upon the entire outstanding amount of the Letter of Credit and, at Seller's cost and with Seller's funds, place such amount in an account controlled by Buyer until Seller provides substitute Development Security or Performance Security meeting the requirements of this Article 8.

8.11 Buyer's First Priority Security Interest in Cash or Cash Equivalent Collateral.

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

against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.11 and the final sentence of Section 11.2):

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

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

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

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

ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, upon actual receipt or rejection, as shown on the first class postage return receipt or the tracking notice; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, upon actual receipt or rejection, as shown on the tracking report; (c) if sent by electronic communication (including email or other electronic means), (i) in the case of billing, dispute, or Event of Default Notices, at the time the receiving Party acknowledges its receipt of such Notice, and (ii) in the case of all other Notices, at the time such Notice is delivered to the receiving Party; or (d) if delivered in person, upon actual receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided in Exhibit J.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, which event or circumstance was not anticipated as of the Effective Date and despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19 (but only with respect to governmental rules or mandates related to COVID-19 that are implemented following the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; acts or failure to act by a Governmental Authority, except to the extent expressly excluded pursuant to Sections 10.1(c)(vii) or 10.1(c)(xv) below; war; blockade; civil insurrection; riot; civil disturbance; serial defect; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price, than the Contract Price), (ii) delays in, or an inability of a Party to obtain, financing; (iii) any requirement to comply with the RPS or any change (whether voluntary or mandatory) in the RPS that may affect the value of the Energy hereunder; (iv) any increase of any kind in any cost, including the imposition of any taxes, tariffs or duties; (v) any changes in the financial condition of Buyer, Seller, any Lender or any contractor, subcontractor, or supplier affecting a Party’s ability to perform its obligations under this Agreement; (vi) Seller’s inability to obtain sufficient wind to power to operate the Facility, except to the extent such inability is caused by a Force Majeure Event; (vii) any change in the manner of enforcement or interpretation of any Law, in each case as such Law is in effect as of the Effective Date, and except, with respect to the COVID-19 pandemic, to the extent expressly included in Section 10.1(b); (viii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (ix) the inability of a Party to make payments when due under this Agreement; (x) a Curtailment Order, except to the extent that a Curtailment Order is caused by an event that otherwise qualifies as a Force Majeure Event; (xi) Seller’s inability to obtain sufficient labor, equipment, materials, or other goods and resources to build or operate the Facility in accordance with this Agreement, except to the extent such inability is caused by a

Force Majeure Event; (xii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (xiii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (xiv) except as the Guaranteed Commercial Operation Date may be extended as a result of Permitted Extensions, Seller's inability to achieve Commercial Operation following the Guaranteed Commercial Operation Date; or (xv) the COVID-19 pandemic or the effects or impacts thereof, except to the extent expressly included in Section 10.1(b).

10.2 **No Liability If a Force Majeure Event Occurs**. Subject to Section 2.8, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event, so long as such Party complies with its obligations under this Article 10. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event, so long as such Party complies with its obligations under this Article 10. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder. Any delays caused by a Force Majeure Event will not serve to increase the Contract Term.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as reasonably practicable, but in no case more than fourteen (14) days after such Party becomes aware that an event or series of events, as applicable, constitutes a Force Majeure Event, notify the other Party in writing of such Force Majeure Event and the details known to such Party as of the date of such Notice, (b) as soon as reasonably practicable, but in no case more than thirty (30) days after such Party becomes aware that an event or series of events, as applicable, constitutes a Force Majeure Event, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, the anticipated extent of any delay or interruption in performance, and, to the extent reasonably practicable, a mitigation plan for limiting or overcoming the impacts of the Force Majeure Event, (c) regularly, but no less than once every calendar month, keep the other Party apprised of the status and anticipated extent of continuing delay of the Force Majeure Event, and (d) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be unable to perform its material obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party experiencing the Force Majeure Event; provided, that if such Force Majeure Event cannot reasonably be cured within such consecutive twelve (12) month period, the Party claiming such Force Majeure Event may provide a plan to the non-claiming Party, which must be acceptable to the non-claiming Party in its reasonable

discretion, to cure such Force Majeure Event within an additional six (6) month period and the non-claiming Party may not terminate this Agreement due to such Force Majeure Event unless the Party claiming such Force Majeure Event has not resumed performance of its material obligations hereunder upon the expiration of such additional six (6) month period. Upon any such termination, the non-claiming Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.2(b).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An “**Event of Default**” shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement, and such failure is not remedied within fifteen (15) Business Days after Notice thereof, except as specified in the proviso in Section 8.10(a);

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such representation or warranty is not corrected within thirty (30) days after Notice thereof; *provided*, that this thirty (30) day period shall be extended by up to an additional thirty (30) days if (a) the breach cannot reasonably be cured within the original thirty (30) day period despite diligent efforts, (b) the breach is capable of being cured within the additional thirty (30) day period, and (c) the Defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; *provided*, that this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the breach cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the Defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 and 8.8;

(v) such Party becomes Bankrupt;

(vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2 or 14.3, as appropriate; or

(vii) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails

to assume all the obligations of such Party under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) except as otherwise provided herein, if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

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

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

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

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

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

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

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

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

terminates this Agreement (the “**Terminated Transaction**”) and ends the Contract Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by Seller after the Commercial Operation Date or by Buyer throughout the Contract Term);

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

(d) to suspend performance; and

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

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto if the Non-Defaulting Party elects a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties (which shall not include Affiliates of the Non-Defaulting Party) supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; *provided, however*, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section 11.3 is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section 11.3 is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the

Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

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

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

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, *PROVIDED, HOWEVER,* THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT EITHER PARTY, OR ANY OF EITHER PARTY'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

12.2 **Waiver and Exclusion of Other Damages.** ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO THE PARTIES' LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, AND THE EXCLUSIONS THERETO, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, THE TOTAL LIABILITY OF SELLER UNDER THIS AGREEMENT PRIOR TO THE COMMERCIAL OPERATION DATE SHALL BE LIMITED TO THE AMOUNT REQUIRED

TO BE POSTED AS DEVELOPMENT SECURITY PURSUANT TO SECTION 8.7, LESS ANY AMOUNTS COLLECTED BY BUYER PRIOR TO THE COMMERCIAL OPERATION DATE; *PROVIDED, HOWEVER*, THAT SUCH LIMITATION SHALL NOT APPLY TO SELLER'S INDEMNIFICATION OBLIGATIONS HEREUNDER IN CONNECTION WITH PERSONAL INJURY OR DAMAGE TO PROPERTY, AND NO AMOUNTS OWED PURSUANT TO SUCH INDEMNIFICATION OBLIGATIONS IN CONNECTION WITH PERSONAL INJURY OR DAMAGE TO PROPERTY SHALL APPLY AGAINST SUCH CAP.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR SUCH BREACH, THE OBLIGOR'S LIABILITY FOR SUCH BREACH SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR SUCH BREACH ARE WAIVED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES SET FORTH IN THIS AGREEMENT AND THE MEASURES OF DAMAGES THERETO SATISFY THE ESSENTIAL PURPOSES HEREOF, PROVIDED, HOWEVER, NEITHER PARTY WAIVES ITS CUMULATIVE RIGHTS AND REMEDIES TO THE EXTENT EXPRESS REMEDIES ARE NOT AVAILABLE OR APPLICABLE HEREUNDER.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, EXCEPT IN THE CASE OF THOSE ITEMS SPECIFICALLY EXCLUDED FROM THIS ARTICLE 12. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT E, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

OTHER THAN WITH RESPECT TO ANY BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED HEREIN, NOTHING CONTAINED HEREIN SHALL PRECLUDE EITHER PARTY FROM SEEKING AND OBTAINING ANY AVAILABLE REMEDIES FOR BREACHES NOT RISING TO THE LEVEL OF A DEFAULT, INCLUDING RECOVERY OF

DAMAGES CAUSED BY THE BREACH OF THIS AGREEMENT AND SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF OR ANY OTHER REMEDY GIVEN UNDER THIS AGREEMENT OR NOW OR HEREAFTER EXISTING IN LAW OR EQUITY OR OTHERWISE. SELLER ACKNOWLEDGES THAT MONEY DAMAGES MAY NOT BE AN ADEQUATE REMEDY FOR VIOLATIONS OF THIS AGREEMENT AND THAT BUYER MAY, IN ITS SOLE DISCRETION, SEEK AND OBTAIN FROM A COURT OF COMPETENT JURISDICTION SPECIFIC PERFORMANCE OR INJUNCTIVE OR SUCH OTHER RELIEF AS SUCH COURT MAY DEEM JUST AND PROPER TO ENFORCE THIS AGREEMENT OR TO PREVENT ANY VIOLATION HEREOF. THE RIGHTS GRANTED HEREIN ARE CUMULATIVE.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller (subject to any permits that have not yet been obtained by Seller), the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound, and Seller has obtained or expects to obtain in the ordinary course of operations, at no expense to Buyer, all permits, including, to the extent required, any FERC authorization, required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Industry Practice, the requirements of this Agreement and all applicable requirements of Law.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its

terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

(f) Seller is not in violation of any requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement.

(g) Seller has (i) not entered into this Agreement with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for its obligations under this Agreement. No petition in bankruptcy has been filed against Seller, and Seller nor any of its respective constituent Persons has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(h) Seller has no reason to believe that any of the material permits required to construct, maintain, or operate the Facility in accordance with the requirements of this Agreement and all applicable requirements of Law will not be timely obtained.

(i) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any of Buyer's Share of Energy, Green Attributes, or Capacity Attributes except as permitted by this Agreement.

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

(k) To Seller's knowledge, there are no material investigations, inquiries, orders, hearings, actions or other proceedings by or before any Governmental Authority that are pending or, to the best of Seller's knowledge, threatened in connection with any permit or Environmental Laws with respect to the Facility or the Site. Neither Seller, nor to Seller's knowledge, any third party has used, released, generated, manufactured, produced, or stored in, on, under or about the Site any Hazardous Materials that could reasonably be expected to subject Seller or Buyer to material liability under any Environmental Laws. To Seller's knowledge, with the exception of those Hazardous Materials used and stored in accordance with Environmental Laws and pursuant to any applicable permit, there are no Hazardous Materials used, stored or present at, in, on or under the Site that could reasonably be expected to subject Seller or Buyer to material liability under any Environmental Laws.

(l) Seller shall have Site Control. Seller has determined that the Site constitutes an acceptable site for the construction and operation of the Facility.

(m) Neither the Facility nor Seller's execution of this Agreement is, or during the Contract Term will be, subject to CEQA.

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

(a) Buyer is a validly existing charter city and municipal corporation under the Laws of California, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent or approval of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer, including of Buyer's City Council, other than that which has been obtained.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

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

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

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

13.4 **Seller Covenants.**

- (a) Seller shall, at all times during the Delivery Term, maintain Site Control.

**ARTICLE 14
ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) will be deemed an assignment and will require the prior written consent of the other Party, except as provided in Section 14.3. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall enter into a reasonable and customary consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"), which shall include reasonable and customary extended cure periods for the Lenders. For purposes of the foregoing, in no event shall amendments or other modifications that would adversely affect Buyer be considered reasonable requests by Lender in connection with the Collateral Assignment Agreement.

14.3 **Permitted Assignment.** Notwithstanding Section 14.1, and in addition to the rights set forth in Section 14.2, (A) Seller may at any time, upon sixty (60) days' prior Notice to Buyer (to the extent such prior Notice is permitted under applicable Law, and if such prior Notice is not permitted under applicable Law then, as soon as practicable following the date such Notice is permitted by applicable Law, if applicable), without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control, except as provided in clause (i)) to (i) an Affiliate of Seller, so long as such transfer or assignment does not result in a Change of Control, (ii) in connection with a Tax Equity Financing, or (iii) to a Permitted Transferee; and (B) Buyer may at any time, upon sixty (60) days' prior Notice, without the prior written consent of Seller, transfer or assign this Agreement to (x) a California municipal utility, (y) a joint powers authority established under the California Joint Exercise of Powers Act, or (z) a California municipal district that provides electric utility service to customers in its district; *provided*, that any such assignee or transferee shall have a Credit Rating equal to or better than the Credit Rating of Buyer as of the Effective Date.

14.4 **Change of Control Certification.** If Seller intends to transfer or assign this Agreement (including by a Change of Control) as permitted by Section 14.3, then concurrently with Seller's delivery of Notice pursuant to clause (A) of Section 14.3, Seller shall provide a certification to Buyer substantially in the form attached as Exhibit L hereto that such assignment or transfer (a) does not constitute a Change of Control because either clause (a) or (b) in the proviso

in the definition of “Change of Control” applies, (b) is in connection with a Tax Equity Financing, or (c) is to a Permitted Transferee.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties’ agreement, then in the courts of the State of California, in either case sitting in County of Los Angeles, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after receipt of Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

15.3 **JURY WAIVER.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

15.4 **JUDICIAL REFERENCE.** IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “**COURT**”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “**CLAIM**”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(a) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS

GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(b) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(c) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Seller (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees, attorneys, representatives and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, civil fines and penalties, suits and causes of action (including proceedings before FERC), charges, damages (including indirect, consequential, or incidental), judgments, costs, other monetary remedies or losses of any kind or nature whatsoever, including but not limited to attorney’s and expert witness fees (including allocated costs of internal counsel) or other monetary remedies and costs of litigation, expenses, obligation or liability of any kind or nature whatsoever, (collectively “**Indemnifiable Event**”), to the extent such Indemnifiable Event arises out of, is incident to, is connected in any manner, results from, or is caused by any of the following: (a) the performance, non-performance or breach of this Agreement, any act, error or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, agents, subcontractors of any tier, and anyone directly or indirectly employed by the Indemnifying Party or any of its subcontractors or anyone that they control, including but not limited to any such performance, non-performance, breach, act, error or omission or recklessness or willful misconduct that results in intellectual property infringement or leads to death, bodily injury or personal injury to any person, including the Indemnifying Party’s employees and agents or third persons, or damage or destruction to any property of any kind or nature whatsoever, of either party or third person, or loss of use; or (b) any violation of applicable Law by the Indemnifying Party, in each case in connection with this Agreement. Upon the Indemnified Party’s written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party’s indemnity obligations. The provisions of this Section 16.1 shall be in addition to, and not exclusive of, any other rights or remedies which the Indemnified Party has at law, in equity, under this Agreement or otherwise. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 16.1 may be unenforceable in whole or in part because they are violative of any law or public policy, the Indemnifying Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnifiable Events incurred by the Indemnified Party.

(b) Nothing in this Section 16.1 shall relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting to the extent of its own negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided*, that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Notwithstanding the preceding sentence if the settlement consists solely of a monetary payment by the Indemnifying Party, such settlement shall not require the consent of the Indemnifying Party. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of Ten Million Dollars (\$10,000,000) combined single limit per occurrence and in the aggregate. The amounts of liability insurance described in this Article 17 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance. Such insurance shall contain standard cross-liability and severability of interest provisions such that each person is protected in the same manner as though a separate policy has been issued to each but nothing therein shall operate to increase the insurance company's liability beyond the amount the insurance company would have been liable if only one Person or interest had been named as insured. The liability insurance policies referenced in this Article 17 shall (x) provide an endorsement waiving rights of subrogation against Buyer, (y) name Buyer as additional insured on all required liability insurance, including auto insurance required under Section 17.1(c) (except workers compensation), and (z) be primary to

any insurance of Buyer that may apply to such occurrence, accident or claim and no “other insurance” provision shall be applicable to Buyer or any additional insureds, by virtue of having been named an additional insured under any policy of insurance.

(b) Workers Compensation and Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than One Million Dollars (\$1,000,000) providing statutory benefits as required by Law (if any exposure exists) for injury, sickness, disability or death of the employees.

(c) Business Auto Liability Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) combined single limit. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired motor vehicles in the performance of the Agreement.

(d) Property Insurance. Seller shall maintain or cause to be maintained property insurance covering the Facility against physical loss or damage, including coverage for natural perils including but not limited to flood, earthquake, windstorm, severe convective storm and wildfire, all with limits in accordance with industry standard recognizing that natural perils may be subject to a lower sublimit. Coverage will be on an “all-risk” basis including mechanical and electrical breakdown.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) pricing and other commercially-sensitive or proprietary information provided to or from Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Except as permitted in this Article 18, neither Party shall disclose Confidential Information to a third party, except upon the written consent of the Disclosing Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to

comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy.

18.3 **California Public Records Act.** Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a charter city and municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 7920.000 et seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("**Brown Act**"). Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller as required by CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the rights, liens and priorities of Buyer with respect to such credit support. If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer or Buyer's authorized representative determines that such Confidential Information is subject to required disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, to the extent required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release, *provided*, Buyer shall make good faith, commercially reasonable efforts to cooperate with Seller in Seller's procurement of such court order; *provided further*, Buyer shall disclose the minimum amount of information required under CPRA. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless the Indemnified Party from and against all suits, claims, and causes of action brought against any Indemnified Party for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Notwithstanding anything herein to the contrary, Buyer will not be required to petition for a protective or other court order on Seller's behalf. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by any Indemnified Party, and specifically includes costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against any Indemnified Party, through and including any appellate proceedings. Seller's obligations to all Indemnified Parties under this indemnification provision shall be due and payable on a monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by all Indemnified Party, as well as all damages or liability of any nature.

18.4 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages may be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach may cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in Law, in equity or otherwise, Disclosing

Party will be entitled to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.5 **Permitted Disclosures.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by either Party to such Party's counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, Affiliates or actual or prospective owners, investors, lenders, directors, underwriters, contractors, suppliers or others involved in the construction, operation and financing transactions and arrangements for a Party or its affiliates, or any of its or their agents, consultants or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party, or is bound by substantially similar confidentiality requirements.

18.6 **Press Releases; Environmental Claims.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. Buyer shall have the right to authorize subsequent purchasers of re-sold Renewable Energy Credits purchased by Buyer pursuant to this Agreement (each, a "**Subsequent Purchaser**") to disclose publicly the fact that such Subsequent Purchaser purchased the Renewable Energy Credits, the quantity purchased and the name and location of the Facility. Subject to Section 3.12, Seller represents and warrants to Buyer as of each date of delivery of Green Attributes to Buyer hereunder that it has complied in all material respects with the requirements of Law on the making of claims concerning the ownership and transfer of Green Attributes as provided for in this Agreement.

ARTICLE 19 MISCELLANEOUS

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

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

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support, any third party seeking to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

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

19.10 **Change in Electric Market Design.**

(a) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such

negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.


(b) If any of the Transmission Systems utilized to deliver Product to the Delivery Point under this Agreement are integrated into a new or existing regional transmission organization or independent system operator and such integration has a material and adverse impact on either Party's performance under this Agreement, including the costs of either Party to perform, then the affected Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to restore the balance of benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith; *provided*, that neither Party shall be obligated to amend this Agreement if such amendment(s) would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of such Party's rights, benefits, risks and/or obligations under this Agreement. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15.

[Signatures on following page]

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

SunZia Wind PowerCo LLC, a Delaware limited liability company

City of Riverside, a California charter city and municipal corporation

By: 
Name: Andrew Murray
Title: Authorized Signatory

By: _____
Name: _____
Title: City Manager

Attest:

By: _____
Name: _____
Title: City Clerk

Certified as to Availability of Funds:

By: 
Name: Kristie Thomas, for
Title: Chief Financial Officer

Approved as to Form:


By: 
Name: Ruthann M. Salera
Title: Deputy City Attorney

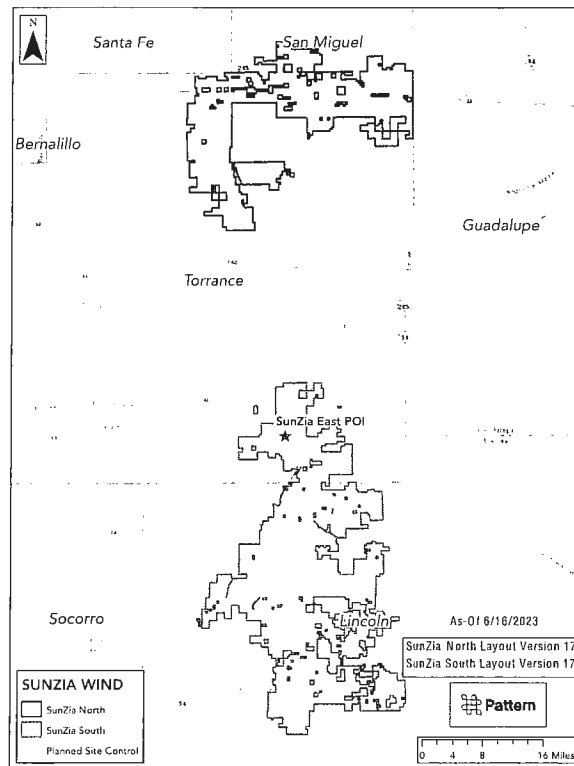
EXHIBIT A
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FACILITY DESCRIPTION

The Facility Description provided herein reflects Seller's expectation for the Facility and the Site as of the Effective Date. Seller may, by Notice to Buyer prior to the Construction Start Date, modify the Site Name and Site Location within the APNs set forth below. Except as otherwise provided in the Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity or the anticipated output of the Facility without Buyer's prior written consent; *provided*, that Seller shall be permitted to repower the Facility after the tenth (10th) Contract Year so long as Seller continues to be obligated to deliver Guaranteed Energy Production and Capacity Attributes associated with the Guaranteed Capacity during such repower; upon any such repower that changes the Installed Capacity, Seller shall deliver an updated Installed Capacity Certificate in the form of Exhibit G.

Site Name: SunZia Wind North and SunZia Wind South

Site Map:



Site Location: Lincoln, Torrance and San Miguel Counties, New Mexico

Technology: Utility Scale Wind Technology

Guaranteed Capacity: 125 MW

Delivery Point: CAISO scheduling point-intertie combination at PALOVRDE_ASR-APND and PVWEST, or an Alternative Delivery Point as mutually agreed by the Parties

Participating Transmission Owner: SunZia Transmission, LLC

EXHIBIT B
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.** “**Construction Start**” will occur upon Seller’s execution of the EPC Contract and issuance thereunder of a “full notice to proceed” with the construction of the Facility. Seller shall provide Buyer a Construction Start Date Certificate substantially in the form attached as Exhibit H hereto upon Seller’s achievement of all of the conditions precedent to Construction Start as specified in this Section 1, and the date certified therein shall be the “**Construction Start Date.**”
 - a. Seller shall cause the Construction Start Date to occur by the Guaranteed Construction Start Date.
 - b. If the Construction Start Date has not occurred by the Guaranteed Construction Start Date, Seller shall pay Construction Daily Delay Damages to Buyer for each day that the Construction Start Date has not occurred following the Guaranteed Construction Start Date. Construction Daily Delay Damages shall be payable to Buyer until the earlier of (i) one hundred and eighty (180) days following the Guaranteed Construction Start Date, or (ii) the Construction Start Date, *provided*, that if Seller pays any Construction Daily Delay Damages and the Commercial Operation Date occurs on or before the Guaranteed Commercial Operation Date, then Buyer shall pay to Seller the amount of all such Construction Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Construction Daily Delay Damages shall not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 of the Agreement.
 - c. If, after one hundred and eighty (180) days following the Guaranteed Construction Start Date, Seller (i) has not started construction of the Facility for reasons other than Force Majeure Events, and (ii) does not provide a development and construction progress report for the Facility showing that the Commercial Operation Date is expected to occur before the Outside Commercial Operation Date, Buyer may terminate this Agreement upon Notice to Seller, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for the payment by Seller, as liquidated damages, of the Damage

Payment and those obligations that survive expiration or termination as described in Section 2.2(b).

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has (i) fulfilled all of the conditions in Section 2.5 of the Agreement, and (ii) provided to Buyer a Commercial Operation Date Certificate substantially in the form attached as Exhibit F hereto upon Seller’s achievement of all of the conditions precedent to Commercial Operation as specified in Section 2.5 of the Agreement. The “**Commercial Operation Date**” shall be the date on which Commercial Operation is achieved, as documented by the delivery of Exhibit F.
- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least thirty (30) days before the anticipated Commercial Operation Date. For the avoidance of doubt, Seller may continue to increase the Installed Capacity of the Facility after the Commercial Operation Date and will notify Buyer from time to time of such increases by delivering a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto; when the Installed Capacity is complete, Seller shall include a statement to that effect in a Notice accompanying the final such certificate.
 - b. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay COD Daily Delay Damages to Buyer for each day that Commercial Operation has not occurred after the Guaranteed Commercial Operation Date. COD Daily Delay Damages shall be payable to Buyer until the earlier of (i) the Commercial Operation Date, (ii) the aggregate of all Delay Damages paid by or due from Seller equals the Development Security Amount required to be posted by Seller as provided in the Cover Sheet, or (iii) the Outside Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for COD Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the COD Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of COD Daily Delay Damages shall not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 of the Agreement.
 - c. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date and before the Outside Commercial Operation Date, the total Delay Damages due under this Agreement shall be: (i) the number of days between the Commercial Operation Date and the Guaranteed Commercial Operation Date, *multiplied by* (ii) the Development Security Amount, *divided by* (iii) one hundred eighty (180). If Seller has paid Delay Damages in an aggregate amount that exceeds the result of the calculation in the previous sentence, Buyer shall promptly refund such excess amount to Seller.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation by the Outside Commercial Operation Date, either Party may elect to terminate this Agreement in accordance with Section 2.8 of the Agreement.
4. **Extension of the Guaranteed Construction Start Date.** The Guaranteed Construction Start Date shall, subject to notice and documentation requirements set forth below and in Section 10.3 of the Agreement, be automatically extended on a day-for-day basis for delay due to the occurrence of a Force Majeure Event; *provided* no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in Section 10.3. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.
5. **Extension of the Guaranteed Commercial Operation Date.** The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis for the following reasons (each a "**Permitted Extension**"):
 - a. delay due to a Force Majeure Event, subject to Article 10;
 - b. delay caused by a Transmission Provider (not caused by Seller's actions or inaction);
 - c. delay in the completion of the Interconnection Facilities or the commercial operation date of the SunZia Transmission Line (not caused by Seller's actions or inaction); or
 - d. delay caused by Buyer breach or default of its obligations under this Agreement.

The cumulative Permitted Extensions granted under clauses 5(a), 5(b) and 5(c) shall not exceed one hundred eighty (180) days. The Permitted Extension granted under clause 5(d) shall be unlimited in duration. No extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller becomes aware of such delay, except that in the case of a delay occurring within sixty (60) days before the Guaranteed Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

6. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have one hundred eighty (180) days after

the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to at least the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any planned changes to the Facility or the site.
5. Schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar month/quarter.
7. Forecast of activities scheduled for the current calendar month/quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones, and evidence of completion of Milestones, upon reasonable request from Buyer.
9. List of issues that could reasonably foreseeably affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the PTO's Transmission System and all other interconnection utility services.
13. Any other documentation, including copies of the Interconnection Agreement, transmission agreements and permits, as reasonably requested by Buyer, as such documentation may be redacted by Seller as necessary.

EXHIBIT D
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FORM OF AVERAGE FORECAST OF ENERGY (MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								

EXHIBIT E
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

ENERGY REPLACEMENT DAMAGES CALCULATION

In accordance with Section 4.7 of the Agreement, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, and Seller elects to not provide Replacement Product, a liquidated damages (“**Energy Replacement Damages**”) payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the LMP in the Real-Time Market at the Delivery Point for all of the hours in the Performance Measurement Period, plus (b) the REC Price

D = the Contract Price, in \$/MWh

provided, if the result of C – D above is greater than thirty-five dollars (\$35), such result shall be deemed to be equal to thirty-five dollars (\$35).

“**Adjusted Energy Production**” shall mean the sum of the following: (i) (A) if Seller provided Replacement Product or paid Energy Replacement Damages for the prior Performance Measurement Period, the greater of (a) seventy five percent (75%) of the Expected Energy for the first Contract Year of the current Performance Measurement Period or (b) the Delivered Energy plus Lost Output in the first Contract Year of the current Performance Measurement Period, otherwise (B) the Delivered Energy plus Lost Output in the first Contract Year of the current Performance Measurement Period; plus (ii) Delivered Energy plus Lost Output in the second Contract Year of the Performance Measurement Period.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days after such Notice and (b) ninety (90) days after each Contract Year.

EXHIBIT F
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [_____] ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Wind turbines with a nameplate capacity at least equal to 90% of the Guaranteed Capacity have been installed at the Facility.
- (2) Testing and commissioning of each wind turbine referred to in paragraph (1) above has been completed in accordance with the turbine supply agreement, and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.
- (3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner on _____[DATE]_____.

Authorization to parallel the Facility was obtained by the Participating Transmission Owner on _____[DATE]_____.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By: _____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]

EXHIBIT G
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [_____] ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("Seller") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of the date set forth below, [_____] wind turbines with an aggregate nameplate capacity of [____], which is the Installed Capacity as of the date hereof, have been installed at the Facility, and testing and commissioning of each such wind turbines has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By: _____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]
Exp. [DATE]

EXHIBIT H
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Pattern Entity] ("**Seller**") to [_____] ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) the EPC Contract related to the Facility was executed on _____;
- (2) The full notice to proceed with the construction of the Facility was issued on _____ (attached);
- (3) the conditions to Construction Start set forth in Section 1 of Exhibit B to the Agreement have been satisfied
- (4) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____ (such description shall amend the description of the Site in Exhibit A).

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

By: _____
Its: _____
Date: _____

EXHIBIT I
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]

DATE: [●]

BENEFICIARY: CITY OF RIVERSIDE, A CALIFORNIA CHARTER CITY AND MUNICIPAL CORPORATION

[ADDRESS]

APPLICANT: SUNZIA WIND POWERCO LLC

[NAME, ADDRESS, CONTACT]

EXPIRATION DATE: [●]

AMOUNT/CURRENCY: [●]

AT THE REQUEST OF AND FOR THE ACCOUNT OF APPLICANT, WE, [INSERT BANK NAME AND ADDRESS] ("**ISSUER**", "**WE**", "**US**" OR "**OUR**"), HEREBY ESTABLISH IN YOUR FAVOR IN RESPECT OF OBLIGATIONS OF APPLICANT OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ("**LETTER OF CREDIT**") IN FAVOR OF THE CITY OF RIVERSIDE, A CALIFORNIA CHARTER CITY AND MUNICIPAL CORPORATION ("**BENEFICIARY**", "**YOU**" OR "**YOUR**"), [BENEFICIARY ADDRESS], WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO BUT NOT EXCEEDING [●] (THE "**FACE AMOUNT**").

THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS [DEVELOPMENT] [PERFORMANCE] SECURITY PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2023 BETWEEN APPLICANT AND BENEFICIARY (AS AMENDED FROM TIME TO TIME, THE "**AGREEMENT**").

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [●], WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE "**EXPIRATION DATE**").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL SUCCESSIVE TWELVE (12) MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [●] (THE "FINAL EXPIRATION DATE"), UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE THEN-CURRENT EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR OVERNIGHT COURIER AT YOUR ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT YOU MAY DRAW ON US HEREUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT) PURPORTEDLY SIGNED BY THE BENEFICIARY'S DULY AUTHORIZED REPRESENTATIVE.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY TO [ADDRESS] OR (B) BY FACSIMILE TO FACSIMILE NUMBER 1-877-801-7787 (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER 1-877-801-0414 OR YOU CONFIRM BY EMAIL AT: BMOGTO.SBLCGTEENEWAPPLICATIONS@BMO.COM. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL AND FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER'S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY'S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE.

WE HEREBY AGREE THAT THE DRAWING DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY

HONORED BY US UPON DELIVERY OF THE ABOVE SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN.

AS STIPULATED HEREIN, "**BUSINESS DAY**" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF ILLINOIS ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME BY TELEPHONE OR FACSIMILE AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ('**ISP98**') AND AS TO MATTERS NOT ADDRESSED BY ISP98 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF NEW YORK.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

OTHER THAN AS PROVIDED HEREIN, COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING, SHALL SPECIFICALLY REFER TO BENEFICIARY AND TO OUR LETTER OF CREDIT NO. [●], AND SHALL BE ADDRESSED TO: [●] [ISSUING BANK'S NAME AND ADDRESS].

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: [BENEFICIARY], ATTN: [BENEFICIARY ADDRESS]. ONLY NOTICES TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL COSTS RELATED TO THIS LETTER OF CREDIT SHALL BE PAID BY THE APPLICANT.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. AND CANADIAN GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

EXHIBIT "A"

DRAWING CERTIFICATE

TO: [ISSUING BANK]

[address]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ISSUED BY [ISSUING BANK] AND FOR THE BENEFIT OF THE CITY OF RIVERSIDE, CALIFORNIA ("**LETTER OF CREDIT**"); CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT)

THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I, _____, AN AUTHORIZED REPRESENTATIVE OF THE CITY OF RIVERSIDE ("**BENEFICIARY**"), DO HEREBY CERTIFY THAT:

APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2023 (AS AMENDED FROM TIME TO TIME, THE "**AGREEMENT**").

[CHOOSE ONLY ONE OF THE FOLLOWING]

- (1) BENEFICIARY IS MAKING A DRAWING UNDER THE LETTER OF CREDIT IN THE AMOUNT OF U.S. \$ _____ BECAUSE A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED OR OTHER OCCASION PROVIDED FOR IN THE AGREEMENT WHERE BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED.
- (2) BENEFICIARY IS MAKING A DRAWING UNDER THE LETTER OF CREDIT IN THE AMOUNT OF U.S. \$ _____, WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, BENEFICIARY IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF USD _____, SUCH AMOUNT TO BE PAID TO BENEFICIARY BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO: (INSERT WIRE INSTRUCTIONS), WHICH, BENEFICIARY CERTIFIES IT IS ENTITLED TO RECEIVE UNDER THE AGREEMENT.

COMMUNICATIONS TO ME CONCERNING THIS DRAWING CERTIFICATE MAY BE
MADE AT FOLLOWING TELEPHONE AND FACSIMILE NUMBERS: _____;
_____.

IN WITNESS WHEREOF, BENEFICIARY THROUGH ITS AUTHORIZED
REPRESENTATIVE HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE
THIS ____ DAY OF , 20 _.

CITY OF RIVERSIDE

BY: _____

NAME: _____

TITLE: _____

EXHIBIT J
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

NOTICES

SUNZIA WIND POWERCO LLC ("Seller")	CITY OF RIVERSIDE ("Buyer")
All Notices: Street: 1088 Sansome St. City: San Francisco, CA Attn: General Counsel Phone: (415) 283-4000 Email: generalcounsel@patternenergy.com	All Notices: Street: 3750 University Ave, 5 th Floor City: Riverside, CA 92501 Attn: Public Utilities General Manager Phone: (951) 826-5772 Fax: (951) 826-2450 Email: tcorbin@riversideca.gov
With a copy to: Attn: Pattern Origination Email: origination@patternenergy.com	With a copy to: Street: 3435 14 th St City: Riverside, CA 92503 Attn: ROSA Contracts and Projects Manager Phone: (951) 826-8500 Email: jmayne@riversideca.gov settlements@riversideca.gov
Reference Numbers: Duns: 11-905-0832 Federal Tax ID Number: 85-0592881	Reference Numbers: Duns: 05-516-9452 Federal Tax ID Number: 95-6000769
Invoices: Attn: Pattern Energy Settlements Phone: 713-308-4200 Email: AccountingSettlements@patternenergy.com	Invoices: Power Resources Settlements Phone: 951-826-8514 Email: Settlements@riversideca.gov

SUNZIA WIND POWERCO LLC ("Seller")	CITY OF RIVERSIDE ("Buyer")
Scheduling: Attn: Manager 24/7 Operations Control Center 888 Westheimer Road, Suite 213 Houston, TX 77006 Email: patternocc@patternenergy.com Realtimeoperations@patternenergy.com Phone: 713-308-4242 Facsimile: 281-694-2848	Scheduling: Attn: Riverside Market Operations Phone: 951-826-8519 Email: marketops@riversideca.gov With a copy to: Attn: Ivan Velasco Phone: 951-826-8525 Email: ivelasco@riversideca.gov, jhinkle@riversideca.gov
Confirmations: Attn: Pattern Energy Settlements Phone: 713-308-4200 Email: AccountingSettlements@patternenergy.com	Confirmations: Attn: Power Resources Settlements Phone: 951-826-8514 Email: Settlements@riversideca.gov
Payments: Attn: Pattern Energy Settlements Phone: 713-308-4200 Email: AccountingSettlements@patternenergy.com	Payments: Attn: Treasury Manager-Mitchell Mason Phone: (951) 826-5812 Email: mmason@riversideca.gov
Wire Transfer: BNK: Citibank N.A. ABA: 031100209 ACCT: 38979859 ACCT NAME: Pattern Renewables 2 LP	Wire Transfer: BNK: Bank of America Commercial Service Contact Center ACCT NAME: City of Riverside ACH Routing No: 121000358 ACH Account No: 14965-01243 Wire Routing No. (if different from ACH): 026009593 Wire Account NO. (if different from ACH): 14965-01243
With additional Notices of an Event of Default to:	With additional Notices of an Event of Default to: Attn: ROSA Contracts and Projects Manager Phone: (951)826-8500 Email: jmayne@riversideca.gov Settlements@riversideca.gov
Emergency Contact: Attn: 24/7 Operations Control Center Phone: (713) 308-4242 Email: patternocc@patternenergy.com	Emergency Contact: Attn: Riverside Market Operations Phone: 951-826-8519 Email: marketops@riversideca.gov

EXHIBIT K
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

OPERATING RESTRICTIONS

Operating restrictions of the Facility for Market Curtailment Periods are as follows:

- Interconnection Capacity (Maximum Injection Amount): 3,000 MW
- Minimum operating capacity: 0.0 MW
- Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A
- Ramp Rate: To be provided by Seller upon Notice to Buyer prior to Commercial Operation
- Minimum Down Time: N/A

EXHIBIT L
to
Renewable Power Purchase and Sale Agreement
between
SunZia Wind PowerCo LLC
and
City of Riverside

FORM OF CHANGE OF CONTROL CERTIFICATION

This certificate ("**Certificate**") is being delivered by SunZia Wind PowerCo LLC, a Delaware limited liability company ("**SunZia**") pursuant to Section 14.4 of that certain Renewable Power Purchase and Sale Agreement by and between SunZia and City of Riverside, a California charter city and municipal corporation in the City of Riverside, California ("**Riverside**"), dated as of [____], 2023 (the "**PPA**"). Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the PPA.

Pursuant to Section 14.3 of the PPA, SunZia has notified Riverside of its intent to transfer or assign the PPA to [name of assignee entity], a [state of formation] [entity type], [**an Affiliate of SunZia**][in connection with a Tax Equity Financing][a Permitted Transferee] [NTD: Seller to select applicable assignment.].

Pursuant to Section 14.4 of the PPA, the undersigned certifies to Riverside as follows, in each case, as of the date first written above, that the assignment is permitted under Section 14.3 of the PPA because: [NTD: Seller to include only those conditions from the list below which apply to such assignment.]

- A. [Such transfer or assignment does not constitute a Change of Control because the Ultimate Parent, itself or together with other Persons that would meet the requirements of the definition of Permitted Transferee, retains [**the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of Seller or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in Seller**][the right to direct the policies or operations of Seller, and such right to direct the policies or operations of Seller is not subject to revocation or modification without the consent of the Ultimate Parent] [NTD: Seller to select applicable option].]
- B. [Such transfer is in connection with a Tax Equity Financing.]
- C. [Such transfer or assignment is made to a Permitted Transferee.]

[signatures on following page]

EXECUTED on this _____ day of _____, 20__.

SUNZIA WIND POWERCO LLC

By: _____

Name:

Title:

This serves as a bill of sale, transferring from Seller to Buyer all of Seller's right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person: _____ tel: