

**ANTELOPE DSR 1 SOLAR PROJECT**

**POWER SALES AGREEMENT  
BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF RIVERSIDE, CALIFORNIA**

**Dated as of July 16, 2015**

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# ANTELOPE DSR 1 SOLAR PROJECT

## POWER SALES AGREEMENT

1. **PARTIES.** This Antelope DSR 1 Solar Project Power Sales Agreement (this “Agreement”), is dated for convenience as of the 16<sup>th</sup> day of July, 2015, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” and the CITY OF Riverside, a municipal corporation organized and existing under the laws of the State of California. The CITY OF RIVERSIDE is also periodically designated in this Agreement as “RIVERSIDE” or as “Purchaser, or, depending upon the context as “SCPPA Participant” or participant. RIVERSIDE and SCPPA are also sometimes herein referred to individually as a “Party” and together as the “Parties.”
2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts, which follow, are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly implements the goals and objectives of the Parties as expressed herein. References to “Sections,” and “Appendices,” shall be to Sections, and Appendices as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act” as defined in Attachment A), by its members, which are municipalities and an irrigation district that supply, among other things, electrical energy in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

- 2.2 Pursuant to the terms of the Act, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, manage, operate, maintain and administer projects involving systems, methodologies and programs for the acquisition, supply, procurement and delivery of secure, long-term reliable supplies of renewable electric energy, including solar energy, and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, undertaken, constructed, managed, operated, maintained and administered and to provide by agreement for the performance and carrying out of any such activities.
- 2.3 Purchaser is a California municipality that provides electric energy to its citizens through its municipally owned electric system. Purchaser is one of the parties to the SCPPA Joint Powers Agreement.
- 2.4 In pursuit of potential renewable electric resources to address SCPPA member renewable energy needs, SCPPA, together with the Purchaser and other SCPPA members have identified and investigated a potential photovoltaic solar energy generation resource located in Los Angeles, County, California, denominated the Antelope DSR 1 Solar Project (the “Project” as defined in Attachment A hereof) to be developed by Antelope DSR 1, LLC, a Delaware limited liability company and an affiliate of sPower LLC, a Delaware limited liability company.
- 2.5 After negotiations SCPPA intends to enter into a Power Purchase Agreement with the Antelope DSR 1, LLC, for the purchase of electric output of the Antelope DSR 1 Solar Project (the “Project” as defined in Attachment A hereof).
- 2.5 Purchaser has a need for a percentage of the capacity, electric output and associated rights, benefits and credits of the Project, and has determined to enter into this Power Sales Agreement with SCPPA for the purpose of meeting such needs.
- 2.7 SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Agreement, as agent for Purchaser to fully implement Purchaser’s objectives in the Project as set forth herein.
3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for Purchaser’s share of SCPPA’s costs with respect to the Project, the Parties agree as herein set forth.
4. **DEFINITIONS.** Attachment A to this Agreement, attached hereto and incorporated herein, sets forth definitions of certain terms used in this Agreement. Certain other capitalized terms used herein are defined in the Power Purchase Agreement and shall have the meaning ascribed therein. The terms defined in Attachment A, the Power Purchase Agreement and this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Attachment A, the Power Purchase Agreement or as set out below:
- 4.1 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.

- 4.2 Effective Date. The date described in Section 16.1 hereof.
- 4.3 Total Power Costs. All of SCPPA's costs resulting from SCPPA's contracting for, providing for, accommodating, and facilitating the Project, including costs arising under any of the Power Purchase and Security Agreements or other Project Agreements. SCPPA shall apply, as a credit against Total Power Costs, any receipts, revenues and other moneys received by SCPPA from surplus equipment, materials, supplies or assets relating to the Project sold prior to the date of Commercial Operation for the benefit of SCPPA, as well as such other amounts to be applied as a credit against Total Power Costs pursuant to this Agreement. Total Power Costs shall consist of (i) the Delivery Output cost component (described in Section 4.3.1), (ii) the Power Purchase Agreement General and Administrative cost component, (iii) a Supplementary Services cost component to the extent SCPPA incurs such costs (described in Section 4.3.3), (iv) a Reserve Fund cost component (described in Section 4.3.2), and (v) a Power Purchase and Security Agreements cost component (described in Section 4.3.5), and shall include, but not be limited to, the items of cost and expense referred to in the Power Purchase and Security Agreements and this Section 4.3 that are accrued or paid by SCPPA during each Month of each Power Supply Year. In the event any Power Supply Year shall consist of fewer than twelve Months, the fraction set forth in Section 4.3.2 shall be adjusted accordingly and, in the event of any revision of the Annual Budget after the commencement of any Power Supply Year, the amount determined pursuant to Section 4.3.2 shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to Section 4.3.2 shall be evenly apportioned over the remaining Months of such Power Supply Year.
- 4.3.1 The Delivery Output cost component of Total Power Costs for each Month shall consist of the costs of the Facility Output, as calculated at the applicable Contract Price therefor in the Power Purchase Agreement.
- 4.3.2 The Power Purchase Agreement General and Administrative cost component of Total Power Costs for each Month shall consist of the administrative and general costs with respect to the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to the Project, (ii) all expenses incurred in enforcing the Power Purchase Agreement and other Power Purchase and Security Agreements, and (iii) all costs related to the conducting of the business of SCPPA with respect to the Project, including the applicable portion of salaries, fees for legal, engineering, financial and other services, and costs of the Project Manager, as well as all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project, and all other expenses properly related to the conduct of such affairs of SCPPA.
- 4.3.3 The Supplementary Services cost component of Total Power Costs for each month shall consist of all costs incurred by SCPPA, if any, and to the extent not included in Section 4.3.1, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging

or delivering and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for Facility Output provided for under this Agreement. The Supplementary Services cost component of the Total Power Costs shall also entail all costs incurred by SCPPA, if any, which are necessary to move or otherwise handle delivery of any portion of Facility Output from the Point of Delivery to one or more specified delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.5.

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

4.3.5 The Power Purchase and Security Agreements cost component of Total Power Costs for each Month shall consist of: the costs, without duplication, associated with the Power Purchase and Security Agreements, including, to the extent not otherwise included in this Section 4.3, all costs for such Month of SCPPA in connection with its enforcement of the Power Purchase and Security Agreements or the performance required of SCPPA under any of the Power Purchase and Security Agreements and shall include, without duplication, SCPPA's monthly payment of any applicable associated ancillary costs under the Power Purchase and Security Agreements, and any costs SCPPA is required to pay for the Facility Output, including, where applicable, the costs of Startup and Test Energy.

4.4 Monthly Costs. The costs payable by the Purchaser to SCPPA as described in Section 7.1 hereof.

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

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

5.2 Facility Output and Deliverables. SCPPA shall provide and Purchaser shall purchase



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

- 5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager as provided in this Agreement to administer the Project, or cause the Project to be administered, as provided in this Agreement or pursuant to assignments, instructions or requests by the Coordinating Committee or the Board of Directors, or through any project management or agency agreement.
- 5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1, 5.4.2 or 5.4.3, respectively.
  - 5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least 60 Days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget for such Power Supply Year as prepared by the Project Manager and approved by the Board of Directors. Purchaser may then submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the Annual Budget. SCPPA shall adopt the Annual Budget not less than thirty (30) nor more than sixty (60) Days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to the Purchaser; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available prior to Commercial Operation of the Facility.
  - 5.4.2 As required from time to time during any Power Supply Year, after seven Days written notice to the Purchaser, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year. The Annual Budget shall establish the basis for monthly

Billing Statements to be sent to each Participant, as provided in Section 7 hereof.

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

5.5 Reports. SCPPA will prepare and issue to Purchaser the following reports as soon as reasonably practicable after the end of each quarter of a Power Supply Year:

5.5.1 Financial and operating statement relating to the Project.

5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

5.7 Provide Information. Purchaser agrees to supply SCPPA, upon request, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the administration and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.

5.8 Consultants and Advisors Available. SCPPA shall make available to the Project Manager (if other than SCPPA) and to the SCPPA Participants all consultants and advisors that are retained by SCPPA, and such consultants and advisors shall be authorized to consult with and advise the Project Manager and SCPPA Participants on Project matters.

5.9 Liquidated Damages. Any amounts paid to SCPPA as and for Daily Delay Damages or Shortfall Damages by the Power Purchase Provider as provided under the Power Purchase Agreement shall be remitted to the SCPPA Participants in accordance with their respective Participant Facility Output Shares.

## **6. COORDINATING COMMITTEE.**

6.1 Establishment and Authorization of the Coordinating Committee.

6.1.1 The Coordinating Committee is hereby established and duly authorized to act

on behalf of the SCPPA Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the SCPPA Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) making any recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto and (v) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration thereof, and such further developments as may need to be addressed.

- 6.1.2 The Coordinating Committee shall consist of the designated Representatives of the Participants. Each Participant shall be entitled to cast a vote equal to its Participant Facility Output Cost Share as set forth in Attachment B hereof. An alternate representative of each Participant shall be its alternate Committee Representative or, if none has been appointed, an alternate representative may be appointed by written notice by such Participant to SCPPA and each of the other SCPPA Participants to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee, in the absence of such SCPPA Participant's regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent.
- 6.1.3 No SCPPA Participant's representative shall exercise any greater authority than permitted for the Participant which she/he represents.
- 6.1.4 The chairperson of SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law.
- 6.1.5 For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representatives of the SCPPA Participants holding not less than eighty percent (80%) of the total Participant Facility Output Cost Shares shall be present.
- 6.1.6 Except as may otherwise be provided in an agreement to which all of the SCPPA Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of SCPPA Participants having Participant Facility Output Cost Shares aggregating at least eighty percent (80%) of the total Participant Facility Output Cost Shares. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project taken by the SCPPA Board of Directors shall require an affirmative vote of at least eighty percent (80%) of the Project Votes (as defined in SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Notwithstanding the forgoing, however, if a proposed

action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Participant (other than Purchaser) and Purchaser determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, its interests, then Purchaser agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action.

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

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

6.2 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1, the Coordinating Committee shall have the following responsibilities:

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

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

6.2.3 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager at the request of the Coordinating Committee or pursuant to any applicable agreement.

6.2.4 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.

6.2.5 Carry out all other actions reposed in the Coordinating Committee with

respect to budgeting and billing as set forth in Section 5 and Section 7 of this Agreement.

- 6.2.6 Review, discuss and attempt to resolve any disputes among the SCPPA Participants or the parties to any Project Agreements including, without limitation, the Power Purchase Provider, the counterparties under the Power Purchase and Security Agreements or any other counterparty with respect to any Project Agreement.
- 6.2.7 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the ongoing administration of the Project.
- 6.2.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Project.
- 6.2.9 Review, and, if appropriate, modify, approve or otherwise act upon the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, exchanging, balancing, movement, or other delivery information, climate and weather related matters, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager as requested by the Coordinating Committee, or by the counterparties to Project Agreements, experts, consultants or others.
- 6.2.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager as requested by the Coordinating Committee or, if applicable, the counterparty to any Project Agreement, to be followed by the SCPPA Participants for, among other things, the production, scheduling, tagging, transmission, delivery, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.2.11 Review, modify and approve, if appropriate, any activities with respect to the performance of any Project Agreement, including policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In approving such activities, consideration may be given, if possible, to each SCPPA Participant's electric system conditions, which may prevail during such planned activities.
- 6.2.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase

Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.

- 6.2.13 Review, modify, approve or otherwise act upon any proposed change, extension or modification of any date set forth in Attachment I of the Power Purchase Agreement of the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.2.14 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed Generation under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.
- 6.2.15 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager, as requested by the Coordinating Committee, or by any counterparty to any Project Agreements giving due recognition to the needs of all SCPPA Participants.
- 6.2.16 Review and act upon any matters involving any of the applicable Power Purchase and Security Agreements, any guarantee or letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.
- 6.2.17 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.18 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Facility Output to the Point of Delivery of from any of the Point of Delivery to other points or destinations, as applicable.
- 6.2.19 Review, modify and where appropriate, recommend or approve all Consent Agreements.
- 6.2.20 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other.
- 6.2.21 Review, modify and where appropriate, recommend or approve the implementation of practices and procedures to implement the provisions of Section 9 herein, as may be applicable with respect to any of the SCPPA Participants.

- 6.2.22 Review and approve adjustments to the Participant Facility Output Shares, the Participant Facility Output Cost Shares and associated capacity amounts set forth in Attachment B when and as required by this Agreement; provided, that such resolution shall require the affirmative vote of Purchaser's representative if such adjustment would change a Participant Facility Output Share, Participant Facility Output Cost Share and associated capacity amount unless such adjustment is due to the Default of any Participant (including Purchaser) under Section 11 of this Agreement.
- 6.2.23 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Power Purchase and Security Agreement or any other applicable Project Agreement or as may otherwise be appropriate or beneficial to the Project.
- 6.3 Management Decisions and the Role of Board of Directors. To the extent not provided for under this Agreement, the rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Purchaser shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests with respect to the Project as provided in this Section 6.3. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:
- 6.3.1 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the SCPPA Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility, and SCPPA's rights and interests with respect to the Facility.
- 6.3.2 Scheduling Procedures. When recommended by the Project Manager, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be followed by the SCPPA Participants for scheduling, delivering, controlling and allocating the Facility Output.
- 6.3.3 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.3.4 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.
- 6.3.5 Application of Certain Payments Under the Power Purchase Agreement. The Board of Directors shall review, modify and approve recommendations of the Project Manager as to the application of any payments or amounts received by SCPPA from any source or as a result of Default by the Power Purchase Provider under the Power Purchase Agreement; provided that such payments

and amounts shall be applied to one or more of the purposes set forth in Section 4.3.

- 6.3.6 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Manager, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Periodic Audits. The Board of Directors may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager (if other than SCPPA), the Power Purchase Provider (to the extent provided under any of the Power Purchase and Security Agreements) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable consultant relevant to the administration of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to Purchaser copies of all audits. No more frequently than once every calendar year, the Purchaser may, at its sole cost and expense, audit or cause to be audited the books and cost records of SCPPA, the Project Manager (if other than SCPPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant relevant to the administration of the Project.
- 6.5 Additional Committees. The Board of Directors may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Board of Directors; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements.
- 6.6 Costs of Consultants. Costs (or the applicable portion thereof) of consultants and others employed or appointed by the Board of Directors to perform the duties required hereunder shall be included in Total Power Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).

## **7. CHARGES AND BILLINGS.**

- 7.1 Monthly Costs. The amount of Monthly Costs which shall be paid by Purchaser for a particular Month shall be the sum of the following:
- 7.1.1 Purchaser's Participant Facility Output Cost Share multiplied by the Delivery Output cost component of Total Power Costs (as provided in Section 4.3.1) for such Month.
- 7.1.2 Purchaser's Participant Facility Output Cost Share multiplied by the Power Purchase Agreement General and Administrative cost component of Total



Power Costs (as provided in Section 4.3.2 hereof) for such Month.

- 7.1.3 Purchaser's share of the Supplementary Services cost component of Total Power Costs (as provided in Section 4.3.3 hereof) based on Purchaser's allocated share of any such services procured by SCPPA on behalf of the Purchaser for such Month.
- 7.1.4 Purchaser's Participant Facility Output Cost Share multiplied by the Reserve Fund cost component of Total Power Costs (as provided in Section 4.3.4 hereof) for such Month.
- 7.1.5 Purchaser's Participant Facility Output Cost Share multiplied by the Power Purchase and Security Agreements cost component of Total Power Costs (as provided in Section 4.3.5 hereof) for such Month.

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

7.3 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each SCPPA Participant's Billing Statement with respect to the Total Power Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.

7.4 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth Day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will

give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within 30 Days following receipt of written notification by Purchaser of such dispute.

7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, or more frequently if so determined by the Board of Directors, SCPPA will submit to Purchaser and each of the other SCPPA Participants a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 5.6. If, on the basis of the statement submitted as provided in this Section 7.5, the actual aggregate Monthly Costs and other amounts payable by the Purchaser for any Power Supply Year exceed the amount thereof which Purchaser has been billed, Purchaser shall pay SCPPA, within 20 Days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.5, the actual aggregate Monthly Costs or other amounts payable by the Purchaser for any Power Supply Year are less than the amount therefor which Purchaser has been billed, SCPPA shall, unless otherwise directed by Purchaser with respect to moneys owed to it, credit such excess against Purchaser's next monthly Billing Statement.

7.6 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.

7.7 Prepayment of Monthly Costs. Purchaser may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Purchaser with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Purchaser and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Purchaser to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Purchaser's other obligations under this Agreement.

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

8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) the date of Commercial Operation of the Facility, or (iv) the date of the first delivery of Facility Output to Purchaser and continuing through the term of this

Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Default Invoice received by Purchaser as a result of the operation of Section 11 hereof, whether or not this Agreement has been terminated, or the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 Source of Payments. The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric revenue fund, including any and all legally available electric system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Purchaser will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement except for such as have been obtained.
- 8.5 Conflicts. Purchaser represents and warrants to SCPPA as of the Effective Date that, to Purchaser's knowledge, the execution and delivery of this Agreement by Purchaser, and Purchaser's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Purchaser, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Purchaser's electric revenue fund.
- 8.6 Litigation. Purchaser represents and warrants to SCPPA as of the Effective Date that, to Purchaser's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Purchaser (service of process on Purchaser having been made) in any court that questions the validity of the authorization, execution or delivery by Purchaser of this Agreement, or the enforceability as to Purchaser of this

Agreement.

## **9. OTHER TERMS AND SERVICES.**

- 9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of the Energy to be delivered under this Agreement. The Facility Output generated and produced from the Project shall be scheduled and delivered to Purchaser at the Point of Delivery under the practices and procedures approved pursuant to Section 6.2, as applicable.
- 9.2 Other Services and Transmission From Point of Delivery. It is the obligation of Purchaser to receive its Participant Facility Output Share and to arrange for delivery of such Facility Output to its ultimate destination or destinations after having reached the Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, firming, shaping, swaps, exchanges or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of such Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser.
- 9.3 Energy Services. Except as otherwise provided in this Agreement, nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, firming, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not affect any of the obligations of Purchaser under this Agreement.
- 9.4 [Reserved.]
- 9.5 Balancing Agent and Dynamic Scheduling. Upon the request of Purchaser, SCPPA shall either (i) retain an agent to maintain and balance Purchaser's hourly Energy schedules in accordance with WECC protocols ("Balancing Agent"), including the provision or absorption of imbalance energy to accommodate intra-hour fluctuations of Facility Output as compared to Purchaser's Energy schedule and maintaining a balancing account of accumulated imbalance energy to be settled by adjusting future Purchaser Energy schedules, (ii) arrange for Dynamic Scheduling from the Point of Delivery to Purchaser's control area or electric system, including the procurement and installation of scheduling hardware, software, and communications equipment necessary to effectuate Dynamic Scheduling, (iii) procure, contract for or otherwise arrange for any available integration services to address any of the above referenced imbalances, fluctuations, variability, intermittency, or like conditions or (iv) address the costs, charges or consequences of such imbalances, fluctuations, variability, intermittency, or like conditions through other mechanisms or methodologies which are mutually agreeable to the Purchaser and SCPPA.

- 9.6 Transfer of Environmental Attributes to Purchaser. SCPPA shall transfer all Environmental Attributes received by SCPPA under the Power Purchase Agreement to Purchaser in the same manner by which SCPPA receives Environmental Attributes.

**10. PROJECT SPECIFIC MATTERS AND PURCHASER RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.**

- 10.1 Rights and Obligations under the Project Agreements. Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to deliver to Purchaser its Participant Facility Output Share during the Delivery Term of this Agreement is limited to the Facility Output which SCPPA receives from the Power Purchase Provider for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by SCPPA Participants as provided in this Agreement; and (iv) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or Environmental Attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred pursuant to Section 12.2 of this Agreement. Any net proceeds received by SCPPA from the sale of Guaranteed Generation by the Power Purchase Provider to any third-party purchaser as a result of a Force Majeure event or failure by SCPPA to accept delivery of Energy pursuant to the Power Purchase Agreement shall be remitted by SCPPA to Purchaser.

- 10.2 Revision of Attachment B. The Parties agree that adjustments of the Participant Facility Output Shares, Participant Facility Output Cost Shares and associated capacity amounts in Attachment B in compliance with this Agreement shall be made and treated as an element of administration and not an amendment of this Agreement. The revised Attachment B shall become Attachment B to this Agreement in replacement of the prior Attachment B hereof.

**11. NONPERFORMANCE AND PAYMENT DEFAULT.**

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

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

- 11.2 Notice of Payment Default. In the event of a Payment Default by Purchaser, on or promptly following the Initial Payment Default Date SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Purchaser and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 11.4 and 11.5 of this Agreement. Notice of such Payment Default shall be provided promptly by SCPPA to the other SCPPA Participants. In addition to the foregoing, the notice of Payment Default shall specify that five (5) Days after the issuance of the written notice of Payment Default by SCPPA, deliveries of Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously implement the provisions of this Section 11.
- 11.3 Cured Payment Default. If after a Payment Default, Purchaser cures such Payment Default within thirty (30) Days (the Cure Period) its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 11.4 and 11.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.
- 11.4 Failure to Cure Payment Default. If, at any time after expiration of the Cure Period Purchaser fails to be in Compliance due to its failure to cure its Payment Default in a timely manner in accordance with this Agreement, Purchaser's Project Rights shall immediately be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 11.5 of this Agreement; provided, however, the Defaulting Purchaser's obligation to make payments under this Agreement shall not be eliminated or reduced except to the extent provided in Section 11.6. SCPPA shall provide to the Defaulting Purchaser a separate monthly invoice of any such payment obligations under this Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other SCPPA Participants and such others as SCPPA deems appropriate, of such discontinuance and termination of the Defaulting Purchaser's Project Rights.
- 11.5 Treatment of the Defaulting Purchaser's Project Rights and Obligations upon its Payment Default. In the event Defaulting Purchaser's Project Rights are discontinued and terminated pursuant to Section 11.4 of this Agreement, SCPPA

shall undertake or cause to be undertaken the following actions in the order indicated:

- 11.5.1 SCPPA shall, to the extent permitted under the Project Agreements, offer to convey, transfer and assign to all non-Defaulting SCPPA Participants, on a temporary or permanent basis as determined by SCPPA, the Project Rights and Obligations of the Defaulting Purchaser, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting SCPPA Participants the amount of Project Rights and Obligations requested if the aggregate of such requests does not exceed the amount of the Project Rights and obligations of the Defaulting Purchaser, or (ii) all requesting non-Defaulting SCPPA Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project Rights and Obligations of the Defaulting Purchaser. Each such requesting non-Defaulting Participant shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.
- 11.5.2 If all Defaulting Purchaser's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting SCPPA Participants as provided in Section 11.5.1 of this Agreement, SCPPA shall, to the extent permitted under the Project Agreements and to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remainder (or, all, if applicable) of Defaulting Purchaser's Project Rights and Obligations to third parties, all in accordance with applicable law. Each such requesting third party shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA. If such third party is a SCPPA Member but not a SCPPA Participant as defined herein, such Member, upon accepting such conveyance, transfer and assignment on a permanent basis, shall be deemed a SCPPA Participant.
- 11.5.3 If, at any time or from time to time, any of the Project Rights and Obligations of the Defaulting Purchaser are not conveyed, transferred and assigned as provided in Sections 11.5.1 or 11.5.2 of this Agreement, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer all non-Defaulting SCPPA Participants and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project Rights and Obligations or to remarket or resell such Facility Output, or cause the same to be remarketed or resold; provided, however, that without eliminating Defaulting Purchaser's obligation to make payments under this Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be offset, mitigated and satisfied to the extent that payments are received by SCPPA from the remarketing or sale of Facility Output associated with Defaulting Purchaser's Project Rights.
- 11.5.4 If, at the time of any Coordinating Committee meeting, any of Defaulting Purchaser's Project Rights and Obligations are not conveyed, transferred and

assigned as provided in Sections 11.5.1 or 11.5.2, the associated voting rights with respect to Defaulting Purchaser's Project Rights and Obligations shall be redistributed pro rata among the non-Defaulting SCPPA Participants, based upon the Participant Facility Output Share of such SCPPA Participant, so that the total voting rights remain at 100%.

11.5.5 Upon the termination, conveyance, transfer or assignment of a Defaulting Purchaser's Project Rights and Obligations pursuant to Section 11.4 and this Section 11.5, SCPPA shall make any necessary adjustments to the Participant Facility Output Shares set forth in Attachment B and give written notice thereof to the non-Defaulting SCPPA Participants. Such adjustments shall not require approval by the Coordinating Committee.

Except as provided in this Section 11.5 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any SCPPA Participant's Rights and Obligations without the prior written consent of the SCPPA Participant.

11.6 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Purchaser's Project Rights pursuant to Section 11.4 and conveyance, transfer or assignment of Defaulting Purchaser's Project Rights and Obligations pursuant to Sections 11.5.1 or 11.5.2, Defaulting Purchaser's obligation to make payments under this Agreement (notwithstanding anything to the contrary in this Agreement) shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of Defaulting Purchaser's Project Rights and Obligations, less SCPPA's related costs and expenses; provided, however, such payment obligations for Defaulting Purchaser may be eliminated or reduced to the extent permitted by law, if and to the extent any costs incurred by SCPPA have been fully paid, and the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.

11.7 Use of Operating Reserve Account. With respect to a Payment Default by Purchaser, funds in the operating reserve account, if any, held by SCPPA may be used, to the extent necessary and to the extent available, to cover any deficiency with respect to any payment due by SCPPA attributable to Purchaser's participation in the Project. Any replenishing of any operating reserve account held by SCPPA shall be in accordance with rules and protocols promulgated by SCPPA.

11.8 Step-Up Invoices. Step-Up Invoices shall be issued in accordance with the provisions set forth below.

11.8.1 In the event of a Payment Default by one or more Defaulting SCPPA Participants, which is in existence following the Operating Reserve Depletion Date, SCPPA shall provide by the fifth Day of the Month following such Operating Reserve Depletion Date, a separate Step-Up Invoice to each non-Defaulting Participant that includes a charge equal to the non-Defaulting SCPPA Participant's pro rata share, based upon the Participant Facility Output Cost Shares of all non-Defaulting SCPPA Participants, of the amount of Monthly Costs reflected in the unpaid Billing Statements for the previous



Month for such Defaulting Purchaser). Notwithstanding the foregoing, the amount of each monthly Step-Up Invoice provided to a non-Defaulting Participant shall not exceed 100% of the aggregate amount of Monthly Costs that such non-Defaulting Participant was billed in its Billing Statement for the Month preceding such monthly Step-Up Invoice.

11.8.2 Step-Up Invoices shall be due and payable within twenty (20) Days of the receipt thereof, and payments to SCPPA with respect to Step-Up Invoices shall be separate from any other payments due under each SCPPA Participant's Power Sales Agreement, including but not limited to monthly Billing Statement payments.

11.9 Application of Moneys Received from Step-Up Invoices Relating to the Project. Moneys received by or on behalf of SCPPA from the payment of Step-Up Invoices relating to a Payment Default of a Participant shall be applied in the following manner.

11.9.1 All moneys received from the SCPPA Participants with respect to the amount of Monthly Costs as set forth in the Step-Up Invoices, shall be applied toward the Defaulting SCPPA Participant's Monthly Costs.

11.9.2 In the event a Participant pays less than the total amount of its Step-Up Invoice, such Participant shall be a Defaulting Participant and its partial payment shall be allocated first toward the Monthly Costs of the Defaulting SCPPA Participant.

11.10 Application of Moneys Received from Default Invoices. Moneys received by or on behalf of SCPPA from the payment of Default Invoices shall be credited on each non-Defaulting SCPPA Participant's next monthly Billing Statement or Billing Statements in an amount equal to the aggregate amount such non-Defaulting Participant paid as a result of Step-Up Invoices with respect to such Default Invoice, plus a pro-rata share, based upon the Participant Facility Output Cost Shares of the non-Defaulting SCPPA Participants, of the amount SCPPA received regarding late payment interest charges. In the event of a Defaulting Participant pays less than the full amount of its Default Invoice, the credit to each non-Defaulting Participant shall be adjusted proportionately.

11.11 Application of Moneys Received from Compliance Payments. Moneys received by or on behalf of SCPPA from a Defaulting SCPPA Participant that makes payments to remain in Compliance with respect to a Payment Default, associated with a Defaulting SCPPA Participant's payments to remain in Compliance, shall be credited on each non-Defaulting SCPPA Participant's next monthly Billing Statement(s) in an amount equal to the aggregate amount such non-Defaulting SCPPA Participant paid as a result of Step-Up Invoices with respect to such Compliance payment, plus a pro rata share, based upon the Participant Facility Output Cost Shares of the non-Defaulting SCPPA Participants, of the amount SCPPA received regarding late payment interest charges.

11.12 Application of Moneys Received from Sale of Facility Output. Moneys received by

or on behalf of SCPPA from the sale of Facility Output related to a Defaulting SCPPA Participant's Project Rights and Obligations, as provided in Section 11.5.3 hereof, shall be applied in the following manner in order:

11.12.1 SCPPA shall credit on each non-Defaulting SCPPA Participant's next monthly Billing Statement(s) an amount up to, but not in excess of, the aggregate amount paid to SCPPA by such non-Defaulting SCPPA Participant with respect to each such non-Defaulting SCPPA Participant's Step-Up Invoices.

11.12.2 Following consultation with the non-Defaulting SCPPA Participants, SCPPA shall determine the disposition of any moneys received that are in excess of the aggregate amount of related Step-Up Invoices paid by non-Defaulting SCPPA Participants. Unless the Coordinating Committee determines otherwise, or except as otherwise required by law, the Defaulting SCPPA Participant shall have no claim or right to any such monies.

11.13 No Step-up Before Issuance of Debt. Sections 11.8 through 11.12.2, inclusive, of this Agreement shall not be applicable until bonds or other debt obligations are issued or undertaken by SCPPA in connection with the exercise of the Option Agreement, the Storage Option Agreement, or in connection with any other matter or transaction related to the Project.

## **12. CHARACTER, CONTINUITY OF SERVICE.**

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

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

**13. [Reserved]**

**14. LIABILITY.**

- 14.1 Participants' Obligations Several. Except as otherwise provided in Section 11 of this Agreement, Purchaser and each of the other SCPPA Participants shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Purchaser to make payments under this Agreement is a several obligation and not a joint obligation with those of the other SCPPA Participants under the other Power Sales Agreements to which such SCPPA Participants are parties.
- 14.2 No Liability of SCPPA, Directors, Officers, Etc. Purchaser agrees that neither SCPPA nor any of its directors, officers, employees and agents shall be liable to Purchaser for loss of profits or direct or consequential loss or damage suffered by Purchaser as a result of the performance or non-performance (whether negligent or otherwise) of SCPPA or any of its directors, officers, employees or agents under this Agreement. To the fullest extent permitted by law, Purchaser releases SCPPA and its directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of SCPPA under this Agreement. No such performance or non-performance by SCPPA shall relieve Purchaser from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such undisputed payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. The provisions of this Section 14.2 shall not be construed so as to relieve SCPPA from any obligation under this Agreement.
- 14.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 14.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Purchaser may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA and Purchaser shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Purchaser in accordance with Section 7.4 hereof.
- 14.4 Indemnification for Claims of Retail Customers. Purchaser shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with electric service to any of its retail customers caused by the operation or failure of operation of the Facility or any portion thereof, and shall indemnify and hold harmless SCPPA from any such claim, action or judgment (including reasonable attorneys' fees and other costs of defense).
- 14.5 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 14.2, 14.3 and 14.4 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 14.6 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section

14, the provisions of this Section 14 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy provided under the Project Agreements.

- 14.7 SCPPA Directors, Officers, Employees, Agents Not Individually Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no member of SCPPA's Board of Directors, officer, employee or agent of SCPPA or member of SCPPA in its capacity as a member of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The undertakings by SCPPA under the Power Sales Agreements shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.

## **15. RESTRICTIONS ON DISPOSITION.**

- 15.1 Assignment. It is understood and agreed each SCPPA Participant (including Purchaser) may sell, assign or otherwise dispose of some or all of its Project Rights and Obligations to other SCPPA Participants or SCPPA members under the same terms and conditions as set forth in this Agreement, provided that each such other participating SCPPA member agrees in writing to be bound by the provisions of the Power Sales Agreement of the SCPPA Participant making such sale, assignment or other disposition. In the event of such a sale, assignment or other disposition, SCPPA shall revise Attachment B to reflect the new Participant Facility Output Share allocation and such revision to Attachment B shall not be considered an amendment to any Power Sales Agreement.
- 15.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if the sale, assignment or other disposition is made pursuant to Section 15.1 of this Agreement, or if (i) such Assignee shall assume and agree in writing to fully perform and discharge the Project Rights and Obligations under its Power Sales Agreement, (ii) such Assignee shall have a corporate or long-term senior unsecured credit rating of A- or higher by S&P or A 3 or higher by Moody's, unless otherwise provided by the Board of Directors, and (iii) the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.
- 15.3 Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and such Acquiring Entity shall have a corporate or long-term senior unsecured credit rating not less than investment grade.
- 15.4 Successors and Assigns. Subject in all respects to Sections 11 and 15 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and

shall be binding upon the respective successors and assigns of the Parties to this Agreement.

**16. EFFECTIVE DATE, TERM AND EXPIRATION.**

- 16.1 Effective Date; Execution in Counterparts. This Agreement shall become effective on the first Day when each and all of the following shall have occurred: (i) this Agreement shall have been duly executed and delivered by SCPPA and Purchaser, and (ii) the Power Purchase Agreement shall have been duly executed and delivered by SCPPA and the Power Purchase Provider. Once the Power Purchase Agreement has been executed and delivered as set forth above, SCPPA shall deliver a copy of the same to Purchaser. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.
- 16.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the conditions set forth in Section 16.1 and shall extend for the term specified in Section 16.3 unless earlier terminated pursuant to an express provision of this Agreement; provided, however, that any obligation to make payments to SCPPA or any outstanding liability of Purchaser hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction implemented under this Agreement, shall survive such termination.
- 16.3 Expiration. The term of this Agreement shall begin on the Day this Agreement becomes effective pursuant to Section 16.1 hereof. Unless terminated earlier pursuant to Section 16.4, the term of this Agreement shall expire on the later of: (i) the date SCPPA's Joint Powers Agreement (including any extensions thereof) expires or (ii) the date on which the Power Purchase Agreement is terminated and all obligation(s) of the parties under the Power Purchase Agreement have been fully satisfied or otherwise adequate provision for satisfaction of such obligation(s) have been made and no other such obligation(s) under the Power Purchase Agreement is outstanding; provided, however, that in no event shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.
- 16.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 16.3 hereof, this Agreement shall terminate on the date, if any, by which each and all of the following have occurred:
- 16.4.1 This Agreement shall be superseded as a result of Purchaser having (i) succeeded to SCPPA's rights through another agreement or agreements, or (ii) entered into a replacement power sales agreement or other agreement with SCPPA. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Facility; and
- 16.4.2 The Power Purchase Agreement shall no longer be of any force or effect.

17. **SEVERABILITY.** In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.
18. **REPRESENTATION AND GOVERNING LAW.** The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles, California, and shall be governed by, interpreted and enforced in accordance with the laws of the State of California. All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles, State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.
19. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys' fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.
20. **NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:
- Southern California Public Power Authority  
Attention: Executive Director  
1160 Nicole Court  
Glendora, California 91740
- Public Utilities General Manager  
Riverside Public Utilities  
3750 University Avenue, 3rd Floor  
Riverside, CA 92501
21. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

By: \_\_\_\_\_  
FRED H. MASON  
President

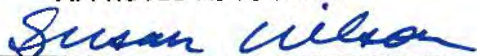
Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

CITY OF RIVERSIDE

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

Attest: \_\_\_\_\_

APPROVED AS TO FORM



DEPUTY CITY ATTORNEY

## ATTACHMENT A

### DEFINITIONS

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

1. Act. All of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 et seq., as amended from time to time.
2. Ancillary Documents. “Ancillary Documents” shall mean the Ancillary Documents as defined in the Power Purchase Agreement.
3. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than 30 Days nor more than 60 Days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Power Costs under this Agreement and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.
4. Balancing Agent. “Balancing Agent” shall have the meaning set forth in Section 9.5.
5. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by Purchaser in accordance with the provisions of Section 7 of this Agreement.
6. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
7. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts (“kW”) or megawatts (“MW”), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
8. Capacity Rights. “Capacity Rights” means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, to Capacity, resource adequacy, associated attributes and/or reserves or any of the foregoing associated with the electric generating capability of the Facility.
9. Commercial Operation. “Commercial Operation” shall have the definition set forth in the Power Purchase Agreement.
10. Compliance. Following a Payment Default, the Defaulting Purchaser shall be in compliance with its payment obligations under this Agreement if it (i) no later than the last Day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account or the other Reserve Fund as a result of any Payment Default.



11. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights or securing the obligations of the Power Purchase Provider under the Power Purchase Agreement, and all consents or agreements relating to a Change in Control under Section 14.7(e) of the Power Purchase Agreement.
12. Cure Period. That period of time beginning on the date of a Payment Default and concluding thirty (30) Days thereafter.
13. Cured Payment Default. A Payment Default which has been cured in accordance with Section 11.3 of this Agreement. If at any time during the Cure Period the Defaulting Purchaser is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
14. Daily Delay Damages. Daily Delay Damages shall have the definition set forth in the Power Purchase Agreement.
15. Day. “Day” means calendar Day unless otherwise specified herein.
16. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
17. Defaulting Purchaser. “Defaulting Purchaser” means Purchaser, where Purchaser has caused a Payment Default under Section 11.1 of this Agreement that has not been remedied or cured.
18. Defaulting SCPPA Participant. A Participant (not including Purchaser) that causes a Payment Default under its Power Sales Agreement that has not been remedied and where the Defaulting Participant has not been remedied or cured.
19. Delivery Output cost component. “Delivery Output cost component” is defined in Section 4.3.1.
20. Dynamic Scheduling. “Dynamic Scheduling” shall mean the automated scheduling of Energy from the Point of Delivery to Purchaser’s control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to the Point of Delivery from the Facility.
21. Energy. “Energy” shall have the same definition as in the Power Purchase Agreement.
22. Environmental Attributes. “Environmental Attributes” shall have the definition set forth in the Power Purchase Agreement.
23. Facility. “Facility” means all of the facilities and real and personal properties and resources and rights and interests, all as described or defined as the Facility in the Power Purchase Agreement.

24. Facility Output. All output, rights, and other tangible or intangible benefits derived from the Facility, whatsoever, including without limitation all Energy, Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
25. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Board of Directors.
26. Force Majeure. “Force Majeure” shall have the definition set forth in the Power Purchase Agreement.
27. Generator Interconnection Agreement. “Generator Interconnection Agreement” shall have the definition set forth in the Power Purchase Agreement.
28. Guaranteed Generation. “Guaranteed Generation” shall have the meaning provided in the Power Purchase Agreement.
29. Initial Payment Default Date. The earlier of (i) the end of the fifth Day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last Day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
30. Joint Powers Agreement. The “Southern California Public Power Authority Joint Powers Agreement” dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
31. Month. A calendar month.
32. Monthly Costs. “Monthly Costs” is defined in Section 4.5.
33. Moody’s. “Moody’s” shall mean Moody’s Investor Services, Inc.
34. Operating Budget. The operating budget approved by the Board of Directors which shall show a detailed estimate of Total Power Costs for a Power Supply Year and all revenues, income or other funds to be applied to Total Power Costs for and applicable to such Power Supply Year.
35. Operating Reserve Depletion Date. The date that is two Months prior to the date on which SCPPA anticipates, assuming continued Payment Defaults by the Defaulting Purchaser, that the moneys in the operating reserve account held at any time by SCPPA will be fully depleted; provided, however, if as of the date on which a Payment Default occurs SCPPA determines that the moneys in the operating reserve account held by SCPPA will be fully depleted in less than two Months (or currently are fully depleted), then the Operating Reserve Depletion Date shall be deemed to have occurred when such a Payment Default occurs.
36. Participant Facility Output Cost Share. With respect to a particular SCPPA Participant, the percentage of SCPPA costs under this Agreement payable by such SCPPA Participant, as set forth for such Participant in Attachment B of this Agreement.

37. Participant Facility Output Share. With respect to a particular Participant and during each Power Supply Year, the percentage entitlement, as set forth for such Participant in Attachment B of this Agreement, of the Facility Output delivered at the Point of Delivery.
38. Payment Default. A failure by the Purchaser to pay when due all of its Billing Statement for any Month.
39. Payment Default Period. That period of time beginning on the initial date of a Payment Default and ending thirty (30) Days following a notice of default as provided in accordance with Section 11.2 hereof.
40. Person. “Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
41. Point of Delivery. Point of Delivery shall have the definition set forth in the Power Purchase Agreement.
42. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and Antelope DSR 1, LLC, dated as of \_\_\_\_\_, 2015, attached hereto as Attachment C, as the same may be amended from time to time.
43. Power Purchase and Security Agreements. The Power Purchase Agreement, the Ancillary Documents, and all other agreements associated with the Facility. The Power Purchase and Security Agreements shall also include any instrument or form of security which affords any opportunity for the purchase of the Facility or acquisition, whether through foreclosure or otherwise, including any mortgage, lease, assignment, beneficial interest, collateral instrument or other device or mechanism providing for the ability to acquire the Facility.
44. Power Purchase Agreement General and Administrative cost component. “Power Purchase Agreement General and Administrative cost component” is defined in Section 4.3.2.
45. Power Purchase and Security Agreements cost component. “Power Purchase and Security Agreements cost component” is defined in Section 4.3.5.
46. Power Purchase Provider. Antelope DSR 1 LLC, as the counterparty to SCPPA under the Power Purchase Agreement, and any other entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
47. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) 90 Days before the scheduled date for issuance of the Bonds, (iv) the date of Commercial Operation of the Facility, or (v) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. The first Power Supply Year shall end on the last Day of the then current Fiscal Year.
48. Project. The term “Project” means the Antelope DSR 1 Solar Project and shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of SCPPA

pursuant to the Power Purchase and Security Agreements and the other Project Agreements, including but not limited to all associated rights, liabilities, interests and obligations; provided, that for purposes of this Agreement it shall be limited to those rights, liabilities, interests and obligations acquired or undertaken by SCPPA in the Power Purchase Agreement and the Project Agreements associated with that agreement. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.

49. Project Agreements. Insofar as they pertain to this Project, any project management agreement, the Power Sales Agreements, each of the Power Purchase and Security Agreements, the Ancillary Documents or any other contracts for the purchase, procurement, delivery or transmission of Facility Output, or any other agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of Facility Output, or agreements to which SCPPA is a party relating to the administration or management of the Project.
50. Project Manager. SCPPA in its capacity as Project Manager or a designee or designees appointed by SCPPA to carry out SCPPA's responsibilities as Project Manager under this Agreement.
51. Project Rights. All rights and privileges of the Purchaser under this Agreement, including but not limited to its right to receive its Participant Facility Output Share under this Agreement.
52. Project Rights and Obligations. The Purchaser's Project Rights and obligations under the terms of this Agreement.
53. Reserve Fund cost component. "Reserve Fund cost component" is defined in Section 4.3.4.
54. Reserve Funds. Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
55. S&P. "S&P" shall mean Standard & Poor's Financial Services LLC.
56. SCPPA Participants. Those entities executing a Power Sales Agreement, together in each case with each entity's successors or assigns, identified as "SCPPA Participants" in Attachment B of this Agreement.
57. Shortfall Damages. "Shortfall Damages" shall have the definition set forth in the Power Purchase Agreement
58. Startup and Test Energy. "Startup and Test Energy" shall have the definition set forth in the Power Purchase Agreement.
59. Step-Up Invoice. An invoice sent pursuant to Section 11.8.1 to a non-Defaulting Participants a result of one or more Payment Defaults, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of one or more Defaulting SCPPA

Participants for Total Power Costs reflected in the Defaulting SCPPA Participant(s) unpaid monthly Billing Statement.

60. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of Facility Output to be utilized by the Purchaser under this Agreement, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the transfer of Facility Output from the Point of Delivery to any other points or destinations, as determined by the Purchaser. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non-simultaneous green energy exchanges.
61. Supplementary Services cost component. “Supplementary Services cost component” is defined in Section 4.3.3.
62. Total Power Costs. “Total Power Costs” has the meaning described in Section 4.3.
63. Transmission System. “Transmission System” shall have the meaning set forth in the Power Purchase Agreement.
64. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
65. WECC. The Western Electricity Coordinating Council or its successor.

**ATTACHMENT B\***

**ANTELOPE DSR 1 SOLAR PROJECT  
POWER SALES AGREEMENT**

**SCHEDULE OF SCPPA PARTICIPANTS,  
CAPACITY AMOUNTS,  
PARTICIPANT FACILITY OUTPUT SHARES,  
PARTICIPANT FACILITY OUTPUT COST SHARES**

PARTICIPANTS	CAPACITY AMOUNTS (MW)	PARTICIPANT FACILITY OUTPUT SHARES	PARTICIPANT FACILITY OUTPUT COST SHARES
City of Riverside	25.0 MW	50.00%	50.00%
City of Vernon	25.0 MW	50.00%	50.00%
TOTAL	50.0 MW	100.00%	100.00%

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\* Attachment B may be revised in accordance with the provisions of Section 10.2 of this Agreement.

**ATTACHMENT C**  
**POWER PURCHASE AGREEMENT**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**ANTELOPE DSR 1, LLC**

**AND**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**Dated as of July 16, 2015**



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## POWER PURCHASE AGREEMENT

### PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), dated as of this 16th day of July, 2015, is being entered into by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ("*Buyer*"), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., ("*Act*") and the "Southern California Public Power Authority Joint Powers Agreement" entered into pursuant to the provisions of the Act among Buyer and Buyer's members, dated as of November 1, 1980, and ANTELOPE DSR 1, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"). Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together as the "*Parties*."

### RECITALS

WHEREAS, Buyer's members have adopted or are adopting policies that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources and to comply with the California Renewable Energy Resources Act; and

WHEREAS, in 2014, Buyer issued a request for proposals ("*RFP*") to acquire renewable energy resources; and

WHEREAS, sPower, an affiliate of Seller, responded to Buyer's RFP on behalf of its wholly-owned subsidiary, Seller, and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy, capacity rights and associated environmental attributes for the purchase price set forth in Appendix A hereto; and

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

### AGREEMENT

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

### ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

**“Affiliate”** means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

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

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

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

**“Annual Contract Quantity”** means, for each Contract Year, the number of MWh set forth on Appendix C.

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

**“Assumed Daily Deliveries”** has the meaning set forth in Section 13.4(c).

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

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

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

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

**“AWS”** means American Welding Society.

**“Bankruptcy”** means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case, action or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for ninety (90) days.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect.

**“Bond Portion”** has the meaning set forth in Section 5.7(b).

**“Brown Act”** has the meaning set forth in Section 14.21(d).

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

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

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

**“CAISO”** means the California Independent System Operator.

**“CAISO Costs”** means (i) all current and future costs, expenses, fees, charges, credits and other amounts assessed by the CAISO to Seller or to Buyer in connection with the Facility and (ii) any and all costs, expenses, fees, charges and other amounts incurred in connection with performing Scheduling services, settlement services and serving as the Scheduling Coordinator. For the avoidance of doubt, CAISO Costs include any and all fees, costs and charges that come into existence for integration of the Facility (by virtue of its being an intermittent solar resource) into the CAISO Grid and any imbalance costs, expenses and charges.

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

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

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

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

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

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

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

**“CEQA Acceptability Notice”** has the meaning set forth in Section 3.1.

**“CEQA Determinations”** means that:

(a) The lead agency conducting the review of the Facility as required under CEQA shall have (i) reviewed and approved the CEQA Documents, (ii) issued a final land use entitlement or other discretionary permit for the Facility, and (iii) filed a Notice of Determination in compliance with CEQA;

(b) Buyer, acting as a responsible agency under CEQA, shall have provided to Seller the CEQA Acceptability Notice; and

(c) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

**“CEQA Documents”** means a draft environmental impact report, mitigated negative declaration or equivalent document prepared by or relied upon by the lead agency in approving Permits for the Facility.

**“CEQA Unacceptability Notice”** has the meaning set forth in Section 3.1.

**“Change in Control”** means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following: (i) a merger or consolidation of Seller or any Parent Entity with or into any other Person or any other reorganization in which the members of Seller or any Parent Entity immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or any Parent Entity, or the power to control the management and policies of Seller or any Parent Entity is transferred to another Person, (iii) a sale, lease, or other disposition of all or substantially all of the assets of Seller or any Parent Entity, (iv) the dissolution or liquidation of Seller or any Parent Entity, or (v) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing; *provided, however*, that a Change in Control shall not include any transaction or series of



transactions in which membership or equity interests in Seller or a Parent Entity are issued or transferred to another Person solely for the purpose of a Tax Equity Financing.

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

**“Closing”** means the consummation of the transactions (a) under the Option Agreement or (b) with respect to a sale pursuant to Buyer’s exercise of the Right of First Offer or Right of First Refusal.

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

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, “substantial completion” under the relevant construction contracts has been achieved, and the Facility possesses all of the characteristics and satisfies all of the requirements set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to operate the Facility;

(c) Seller has delivered to Buyer a certificate of an independent engineer substantially in the form attached hereto of Appendix L-2;

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

(e) Seller has entered into an agreement providing for the operation and maintenance of the Facility with a Qualified Operator;

(f) Buyer has received the Delivery Term Security as provided in Section 5.7 in a form reasonably acceptable to Buyer;

(g) The Facility is both authorized and able to operate and deliver Energy at the Contract Capacity in accordance with the Generator Interconnection Agreement, Prudent Utility Practices, the Requirements, and all Requirements of Law; *provided* that the Facility need not be CEC Certified as a condition to achieving Commercial Operation;

(h) Provided that Buyer, in its role as Scheduling Coordinator, has submitted all required information for the FCDS Finding in a timely manner to the CAISO, Seller has provided notice from the CAISO that the Facility has completed startup testing and has been approved by the CAISO to commence operations and Seller has provided evidence reasonably

satisfactory to Buyer that the Seller has obtained a Full Capacity Deliverability Status Finding; and

(i) Seller has obtained Insurance coverage for the Facility as required by Appendix F.

**“Commercial Operation Date”** means the date on which Commercial Operation of the Facility occurs, as determined pursuant to Section 3.5.

**“Conditional Use Permit”** means the conditional use permit for the Facility to be issued by the City of Lancaster, California.

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

**“Construction Start Date”** means the date on which Seller delivers to Buyer a written certification substantially in the form attached hereto as Appendix L-1.

**“Contract Capacity”** means 50 MW, as measured by the sum of inverter nameplate capacity.

**“Contract Price”** means, for any period of time, the Contract Price set forth in Appendix A.

**“Contract Year”** means (a) with respect to the first (1st) Contract Year, the period beginning on the Commercial Operation Date and extending through December 31 of the calendar year in which the Commercial Operation Date occurs, (b) with respect to the second (2nd) through the twentieth (20th) Contract Years, the applicable calendar year, and (c) with respect to the twenty first (21st) Contract Year, the period beginning on January 1 of the applicable calendar year and extending through the day before the anniversary of the Commercial Operation Date.

**“Costs”** has the meaning set forth in Section 13.4(f)(iii).

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

**“CPRA”** has the meaning set forth in Section 14.21(d).

**“Curtailed Period”** means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive from a Transmission Provider, the CAISO, WECC, NERC, or any other reliability entity due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, (d) over-generation or any other reason adversely affecting the normal function and operation of the CAISO grid or a Transmission Provider’s system, as may from time to time be identified by the CAISO, the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term “Curtailed

Period” shall not include curtailments directed by CAISO for economic reasons or any curtailment by Buyer pursuant to Section 7.4(b).

**“Daily Delay Damages”** means the liquidated damages specified in Section 3.6(c) and Section 3.6(d).

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

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

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

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

**“Delivery Term”** has the meaning set forth in Section 2.2(b).

**“Delivery Term Security”** has the meaning set forth in Section 5.7(b).

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

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

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

**“Early Termination Date”** has the meaning set forth in Section 13.4(a).

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

**“Effective Date”** means the date on which Buyer executes this Agreement.

**“EIRP Forecast”** means the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol for use in submitting a Schedule for the output of the Facility in the Real-Time Market, and if such forecast is not available, the final forecast for the Energy in the Day-Ahead Market.

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

**“Eligible Intermittent Resources Protocol”** or **“EIRP”** means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

**“Energy”** means electrical energy.

**“Enforceability Opinion”** means an executed original of a written legal opinion from counsel for Seller (such counsel to be reasonably acceptable to Buyer), concerning this Agreement and the Ancillary Documents (including enforceability and due authorization thereof) and related matters, in form and substance satisfactory to Buyer and its counsel, dated as of the Effective Date and addressed to Buyer.

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

**“Environmental Attributes”** means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any other Governmental Authority or other Person and (B) that are attributable to (i) generation by the Facility during the Delivery Term or Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including RPS Law and California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto) or any similar international, federal, state or local program or crediting “early action” with a view thereto, laws or regulations involving or administered by the CAMD and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility and do not include (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on an ownership or security interest in the Facility, (b) any other depreciation deductions and benefits, and other tax benefits arising from ownership of the Facility and (c) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

**“Environmental Attributes Value”** means the value of Environmental Attributes purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such index is not available, the value of the Environmental Attributes as determined by the average of three (3) nationally-recognized broker quotes for Environmental Attributes that meet the

definition of Environmental Attributes set forth in this Agreement; *provided* that such index pricing or broker quotes shall relate to Environmental Attributes that are derived from comparable vintage and generation technology as the Environmental Attributes that are being replaced, and are from a generator that qualifies as an “eligible renewable energy resource” within the meaning of the RPS Law at the time of such pricing or broker quotes, as applicable.

**“Environmental Compliance Milestone”** means (a) Seller has obtained the CEQA Determinations and is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith, and the applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA has expired without any such challenge having been filed, or in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement; (b) Buyer has received a true, correct and complete copy of the Conditional Use Permit; and (c) Buyer has received true, correct and complete copies of all documents relating to the environmental condition of the Site in form, scope and substance reasonably satisfactory to Buyer, including any Phase I ESA prepared relative to Site.

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

**“EPC Contractor”** means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Facility.

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

**“EPS Law”** means Sections 8340 and 8341 of the California Public Utilities Code or its successor or comparable state or federal programs.

**“Escrow Account”** has the meaning set forth in Section 5.7(a).

**“Excess Energy”** means, in any Contract Year, Facility Energy delivered in excess of one hundred and fifteen percent (115%) of the Annual Contract Quantity for such Contract Year, which deliveries shall be verified in invoices provided by Seller as set forth in Section 11.2(a).

**“Facility”** means the 50 MW solar photovoltaic power generating facility described in Appendix B-1 and depicted on Appendix B-2, including all property interests and related transmission and other facilities.

**“Facility Assets”** has the meaning set forth in Section 14.25(a), as further defined in the Option Agreement.

**“Facility Cost”** means, measured as of any date, the aggregate amount of all costs and expenses incurred by Seller during the Agreement Term for the development, design, engineering, equipping, procuring, constructing, installing, starting up, and testing of the Facility, including (a) the cost of all labor, services, materials, suppliers, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (b) the cost of acquiring and maintaining the Site Control Documents, (c) real and personal property taxes, ad valorem taxes, sale, use, and excise taxes, and insurance (including title insurance) premiums payable with respect to the Facility, (d) initial working capital requirements of the Facility, (e) the cost of acquiring the Permits for the Facility, (f) the cost of establishing a spare parts inventory for the Facility, and (g) financial, legal, and consulting fees, costs, and expenses.

**“Facility Debt”** means, measured as of any date, the payment obligations of Seller in connection with borrowed money, including (a) principal of and premium and interest on indebtedness, (b) fees, charges, penalties, and expenses related to indebtedness, (c) amounts due upon acceleration or in connection with prepayment or restructuring of indebtedness, and (d) swap or interest rate hedging breakage costs. For the sake of clarity, Facility Debt does not include any Tax Equity Financing.

**“Facility Energy”** means Energy generated by the Facility, less station load and transmission losses to the Point of Delivery, as measured by CAISO-approved Electric Metering Devices.

**“Facility Lender”** means any financing party or Tax Equity Investor providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including in connection with any Tax Equity Financing, any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations. For the sake of clarity, Facility Lender does not include any Tax Equity Investor in its capacity as a Tax Equity Investor, but only includes a Tax Equity Investor that provides Facility Debt and then only in such Tax Equity Investor’s capacity as the provider of such Facility Debt.

**“Facility Lender Consent”** has the meaning set forth in Section 13.3.

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

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

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

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

**“Full Capacity Deliverability Status”** or **“FCDS”** has the meaning set forth in the CAISO Tariff.

**“Full Capacity Deliverability Status Finding”** or **“FCDS Finding”** means (a) Seller has elected Full Capacity Deliverability Status for the Facility and such election is acknowledged by the interconnection provider and CAISO in the Generator Interconnection Agreement, (b) all network and transmission upgrades required in the Generator Interconnection Agreement and associated studies or reports to achieve FCDS have been constructed and placed in service and (c) the Facility’s Net Qualifying Capacity (as defined in the CAISO Tariff) has been confirmed in writing by CAISO; provided that, if the Tehachapi Renewable Transmission Project, as defined in the Facility interconnection studies (**“TRTP”**), is not in service by the date when all requirements for the “Commercial Operation Date” other than the FCDS Finding requirement have been met, then clauses (b) and (c) in this definition shall not apply, if, for each billing cycle until TRTP is placed in service and all other conditions set forth in this definition of Full Capacity Deliverability Status Finding have been satisfied, Seller offers a bill credit in the amount of \$7.00 per MWh delivered, pro-rated for partial deliverability amounts. By way of example only, if at the Commercial Operation Date only 25% of the Contract Capacity has qualified for deliverability status, then 75% of the Facility Energy shall receive the \$7.00 per MWh credit.

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

**“Gains”** has the meaning set forth in Section 13.4(f)(i).

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

**“Governmental Authority”** means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority with jurisdiction over the Parties, the Facility, or this Agreement, or any Person acting as a delegate or agent of any Governmental Authority; provided that “Governmental Authority” specifically excludes Buyer and the Participating Members.

**“Guaranteed Commercial Operation Date”** means December 31, 2016.

**“Guaranteed Generation”** means, with respect to each Contract Year, eighty percent (80%) of the Annual Contract Quantity for such Contract Year, which amount shall be reduced

by the aggregate amount of Deemed Generated Energy during all Seller Excused Hours during such Contract Year.

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

**“Indemnitees”** has the meaning set forth in Section 14.19(a).

**“Independent Manager”** means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (i) a member, stockholder, equity holder, director, manager (except as the Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller, or any Affiliate of Seller; (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Seller, any member of Seller, or any Affiliate of Seller (other than for serving as Independent Manager of Seller), (iii) a Person controlling or under common control with any such stockholder, equity holder, partner, manager, customer, supplier or other like Person, or (iv) a member of the immediate family of any such member, stockholder, equity holder, director, officer, employee, manager, partner, customer, supplier or other like Person.

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

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

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

**“Key Milestone”** means a Milestone for which liquidated damages are provided in Appendix I.

**“Land Lease”** means an agreement to be entered into for Seller to use real estate as described in Appendix N, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed.

**“Lessor”** means any lessor of real property for the Facility pursuant to a Site Control Document.

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

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

**“Local Capacity Requirement Attributes”** means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity,



and that are associated with the electric generating capability of the Facility.

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

**“Losses”** has the meaning set forth in Section 13.4(f)(ii).

**“Major Maintenance Blockout”** has the meaning set forth in Section 4.5(a).

**“Milestone”** has the meaning set forth in Section 3.6(a).

**“Milestone Date”** has the meaning set forth in Section 3.6(a).

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

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

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

**“MWh”** means megawatt-hours.

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

**“Non-Defaulting Party”** has the meaning set forth in Section 13.4(a).

**“Notice of Proposed Third Party Sale”** has the meaning set forth in Section 14.25(c).

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

**“O&M Agreement”** means the agreement for the provision of operation and maintenance services for the Facility entered into or to be entered into by and between Seller and a Qualified Operator.

**“Option Agreement”** means that certain Option Agreement to be entered into by the Parties, substantially in the form set forth on Appendix K.

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

**“Outside Commercial Operation Date”** means March 31, 2017, which date may be extended only pursuant to Section 3.6(b).

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

**“Parent Entity”** means each of sPower Finco 5, LLC, a Delaware limited liability company and sPower Solar Holdings LLC, a Delaware limited liability company.

**“Participating Intermittent Resource”** has the meaning set forth in the CAISO Tariff.

**“Participating Intermittent Resource Program”** or **“PIRP”** means the rules, protocols, procedures and standards for Participating Intermittent Resources under CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff, and any replacement or successor program.

**“Participating Members”** means the City of Riverside and the City of Vernon.

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

**“Performance Security”** means the Project Development Security or Delivery Term Security for the Facility, together or individually, as applicable.

**“Permits”** means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be filed, submitted, obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production, sale and delivery of Products from the Facility, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the, Conditional Use Permit, CEQA Determinations and the Permits described in Appendix B-1.

**“Permitted Encumbrances”** means (a) the Lien in favor of the Facility Lender, (b) any Lien approved by Buyer in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (c) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, *provided* that such proceedings end by the expiration of the Agreement Term, and (d) suppliers’, vendors’, mechanics’, workman’s, repairman’s, employees’ or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof.

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

**“Phase 1 ESA”** means an environmental study prepared in accordance with ASTM E1527-13 (Standard Practice for Environmental Site Assessment: Phase 1 Environmental Assessment Process) with respect to the Site to be prepared by a consultant acceptable to Buyer and delivered to Buyer that demonstrates there are no recognized environmental conditions with respect to the Site that could have an adverse impact on the Facility or the ability of Seller to perform its obligations under this Agreement.

**“Pnode Price”** means the locational marginal price of the Facility’s pnode, as determined by the CAISO. For the avoidance of doubt, the Pnode Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

**“Point of Delivery”** means the CAISO Pricing Node (as defined in the CAISO Tariff) to be established by CAISO at the 220kV bus of Southern California Edison Company’s Antelope Substation and to be identified by notice from Seller to Buyer prior to the Commercial Operation Date, *provided* that in the case of Replacement Product, an alternative delivery point may be designated in accordance with Section 9.2.

**“Pre-Certification Period”** has the meaning set forth in Section 6.1(d).

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

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

**“Project Development Security”** has the meaning set forth in Section 5.7(a).

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

**“Proposed Purchase Notice”** has the meaning set forth in Section 14.25(b).

**“Proposed Sale Notice”** has the meaning set forth in Section 14.25(b).

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

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

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

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

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

**“Qualified Bond Issuer”** means a Person (a) acceptable to Buyer or (b) that is admitted in California and is rated “A” or higher by A.M. Best Company, Inc.

**“Qualified Buyer Assignee”** means (a) a Participating Member or any other non-participating member of Buyer or (b) a third party Person that is rated (1) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P, or (2) “A2” or higher by Moody’s or “A” or higher by S&P if such Person is rated by either S&P or Moody’s, or (3) equivalent ratings by any other credit rating agency of recognized national standing.

**“Qualified Issuer”** means a Person (a) acceptable to Buyer or (b) that maintains a United States domestic branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P or (2) “A2” or higher by Moody’s, or “A” or higher by S&P if such Person is rated by either S&P or Moody’s.

**“Qualified Operator”** means (a) a Person reasonably acceptable to Buyer that has at least three (3) years of operating experience with at least two (2) utility-scale solar projects of 10 MW ac or higher, (b) any Person identified on Appendix H or any such Person’s Affiliates, or (c) any other Person reasonably acceptable to Buyer.

**“Qualified Transferee”** means a Person that (a) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or (ii) “A3” or higher by Moody’s, or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s, or (iii) equivalent ratings by any other credit rating agency of recognized national standing and retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer and in each case, (c) executes a written assumption agreement in favor of Buyer pursuant to which any such Qualified Transferee shall assume all the obligations of Seller under this Agreement, Option Agreement and the Storage Option Agreement.

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

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

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

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

**“Remedial Action Plan”** has the meaning set forth in Section 3.6(a).

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

**“Replacement Capacity Rights”** means Capacity Rights, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Product is being provided.

**“Replacement Energy”** means Energy produced by a facility other than the Facility that, at the time delivered to Buyer, is (i) both RPS Compliant and EPS Compliant, (ii) qualifies under RPS law, and (iii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

**“Replacement Price”** means the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Product, or, absent such a purchase, (a) the Nnode Price, plus (b) the price of the Environmental Attributes that would have been generated by the Facility valued at the Environmental Attributes Value, plus (c) the value of Capacity Rights, if any, equivalent to those that would have been provided by the Facility, whether sold separately or bundled as a package, in each case, for the calculation period, all as reasonably calculated by Buyer.

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Capacity Rights.

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

**“Requirement of Law”** means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or

approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

**“Resource Adequacy Attributes”** means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyer with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity, and that are associated with the electric generating capability of the Facility or another RPS Compliant eligible renewable resource providing Replacement Product.

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

**“Right of First Offer”** and **“ROFO”** have the meaning set forth in Section 14.25(a).

**“Right of First Refusal”** and **“ROFR”** have the meaning set forth in Section 14.25(b).

**“RPS Compliance”** or **“RPS Compliant”** means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource, or equivalent if the RPS Law is changed, under the RPS Law.

**“RPS Compliance Period”** means each “Compliance Period” as defined in the RPS Law.

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

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

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

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

**“Scheduled Outage Projection”** has the meaning set forth in Section 4.5(a).

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

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

**"Seller Excused Hour"** means an hour during which, Seller is unable to produce or deliver Facility Energy from the Facility as a result of (a) curtailments, as set forth in Section 7.4, (b) Buyer's unexcused failure to accept Scheduled Energy, or (c) Force Majeure.

**"Seller Party"** means each of Seller and all other Persons, excluding Buyer, executing any Ancillary Document.

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

**"Shared Facilities Agreement"** means an agreement to be entered into for Seller to use the interconnection facilities described in the Interconnection Agreement of Q667, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed.

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

**"Shortfall Damages"** has the meaning set forth in Section 9.3.

**"Shortfall Makeup Period"** means the Contract Year following the Contract Year during which Shortfall Energy accrues.

**"Site"** means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

**"Site Control"** means that the Site Control Documents have been executed by Seller and each counterparty thereto and are in full force and effect and such Site Control Documents are sufficient to permit Seller to fulfill all of its obligations under this Agreement, the Option Agreement and the Storage Option Agreement.

**"Site Control Documents"** means the real property leases and easements for the Site that together establish Site Control, including (a) each Land Lease, (b) the Shared Facilities Agreement, and (c) the documents listed on Appendix N.

**"Site Control Key Milestone"** means the Key Milestone requiring Seller to achieve Site Control by the Milestone Date therefor.

**"SP-15 Price"** means the CAISO SP-15 Trading Hub Day-Ahead Market hourly LMP, as published by the CAISO. For the avoidance of doubt, the SP-15 Price shall not include the value of any Environmental Attributes or Capacity Rights, if any.

**"Special Purpose Entity"** means a limited liability company which at all times on and after the Effective Date meets the following conditions:

- (a) shall not (without the prior written consent of Buyer) (i) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (ii)

acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets, except to the extent permitted herein, (iv) modify, amend or waive in any material respect any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in California or Delaware.

(b) its organizational documents do and will limit its activities to acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

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

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

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity; provided that (for the avoidance of doubt) the foregoing shall not restrict Parent Entity or any other Seller Affiliate from identifying its indirect relationship to the Facility through Seller;

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

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

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

(i) has not made and will not make loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment securities) or made any fraudulent conveyances to any Person;

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

(k) has not entered into or been a party to, and will not enter into or be a party to, any material transaction with its members or Affiliates, except in the ordinary course



of its business and on terms which are commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party (it being acknowledged that Seller has entered into or may enter into a Land Lease or Shared Facilities Agreement with a Seller Affiliate);

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

(m) except for obligations relating to security posted by Seller in favor of Buyer hereunder or in favor of other parties to contracts entered into by Seller pertaining to the Facility and also except for obligations to Facility Lenders or Tax Equity Investors, does not and will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(n) has complied and will comply with all of the terms and provisions contained in its organizational documents, and has done or caused to be done and will do all things necessary to preserve its existence;

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

(p) will conduct all business in its own name and, except in connection with a Tax Equity Financing utilizing a lease or inverted lease structure, from and after the Commercial Operation Date will hold its material assets in its own name and conducted and will conduct all material business in its own name;

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

(r) will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations (it being acknowledged and agreed that Seller may have no employees to the extent it contracts out its requirements for all necessary managerial, operational and other services);

(s) will observe all limited liability company formalities;

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

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

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

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

(x) has not pledged and will not, except for the security posted in favor of Buyer as provided herein and except as permitted under Section 14.7(c), pledge its assets for the benefit of any other Person;

(y) will not, without having first appointed an Independent Manager, and without the affirmative vote of its Independent Manager: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets (other than as permitted under Section 14.7(c)); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest; and will have such restriction memorialized at all times in the organizational documents of Seller;

(z) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; *provided, however*, that this clause (y) shall not require anyone to make any contribution of capital to Seller and shall not require Seller to make any capital call on its members or to otherwise raise capital; and

(aa) has and will have no indebtedness other than (i) Facility Debt relating to the development, bridge, construction or permanent financing for the Facility, including any indebtedness in its replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, management, administration, leasing and operation of the Facility and the Facility related contracts, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Twenty Million Dollars (\$20,000,000) in the aggregate, (iv) the Performance Security and any indebtedness incurred in support of or connection with the Performance Security, and (v) such other liabilities that are permitted pursuant to this Agreement;

*except that*, until the execution of the principal documents for the Facility's construction financing, such limited liability company may (i) satisfy the insurance requirements of this Agreement by or through Seller's parent entities or investors provided that the policies or endorsements extending insurance coverage to Seller shall reference Seller as an independent legal entity and (ii) satisfy any required security/performance assurance, whether due to be provided to Buyer under this Agreement or the CAISO, by or through Seller's parent entities or investors so long as each letter of credit, guaranty or other instrument of such security/performance assurance references Seller as an independent legal entity.

**"S&P"** means Standard & Poor's Financial Services LLC.

**"Storage Option Agreement"** means that certain Storage Option Agreement to be entered into by the Parties in substantially the form set forth on Appendix O.

**"Subcontract"** means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than Buyer, which Person is providing goods or services to Seller that are related to the performance of Seller's obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a "subcontract" in the policies, ordinances, codes or laws with which Seller must comply pursuant to this Agreement, or that is made with a "subcontractor" as such term is used or defined in such policies, ordinances, codes, or laws.

**"Subcontractor"** means any party to a Subcontract with Seller.

**"System Emergency"** means each of the following: (i) "System Emergency" as set forth in the CAISO Tariff and (ii) a condition or situation that in the judgment of Buyer (a) is imminently likely to endanger life or property; or (b) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, reliability of, or damage to the Transmission System, Transmission Provider's interconnection facilities (as defined in the Generator Interconnection Agreement) or the transmission systems of others to which the Transmission System is directly connected.

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

**"Tax Equity Financing"** means, with respect to Seller or Parent Entity, any transaction or series of transactions (including without limitation any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or Parent Entity, as applicable, being issued or otherwise provided to another Person (a **"Tax Equity Investor"**) in exchange for capital contributions to Seller or Parent Entity, as applicable, or the Facility being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the construction of the Facility by monetizing the Tax credits, depreciation and other tax benefits

associated with the Facility.

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

**“Termination Notice”** has the meaning set forth in Section 13.4(a).

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

**“Test Energy”** means Facility Energy that is delivered to the Point of Delivery prior to the Commercial Operation Date.

**“Transmission Provider”** means the Person operating the Transmission System to and from the Point of Delivery.

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

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

**“Unexcused Cause”** has the meaning set forth in Section 14.6(b).

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

**“WECC”** means the Western Electricity Coordinating Council.

**“WREGIS”** means Western Renewable Energy Generation Information System.

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

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

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

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

(a) time is of the essence

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

(c) reference to any Person includes such Person’s successors and assigns (regardless of whether such Person’s successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this

Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(d) reference to any gender includes the other;

(e) reference to any agreement (including this Agreement), document, act, statute, law, instrument, tariff or Requirement means such agreement, document, act, statute, law, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;

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

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

(h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term, regardless of whether words such as “without limitation” are expressly included in the applicable provision;

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

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

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

## **ARTICLE II**

### **EFFECTIVE DATE, TERM, AND EARLY TERMINATION**

**Section 2.1 Effective Date.** This Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following has occurred: (a) both Parties have executed and delivered this Agreement; (b) Buyer has received (i) copies of all requisite resolutions and incumbency certificates of each Seller Party and any other documents evidencing all actions taken by each Seller Party to authorize the execution and delivery of this Agreement and all Ancillary Documents requiring execution by such Seller Party, such resolutions to be certified as of the Effective Date by an authorized representative of the Seller Party; and (ii) the Enforceability Opinion; (c) Seller has received copies of all requisite resolutions and incumbency certificates of Buyer authorizing the execution and delivery of this Agreement and all Ancillary

Documents requiring execution by Buyer, such resolutions to be certified as of the Effective Date by an authorized official of Buyer, and (d) Buyer and Seller have executed and delivered the Option Agreement, and, if applicable, a memorandum of option in the form required by the Option Agreement has been recorded in the Official Records of Los Angeles County, California.

## **Section 2.2 Term.**

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

(b) **Delivery Term.** This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Commercial Operation Date and ending at 11:59 pm on the day before the twentieth (20th) anniversary of the Commercial Operation Date, unless sooner terminated in accordance with the terms of this Agreement.

**Section 2.3 Survivability.** The provisions of this ARTICLE II, ARTICLE XII, ARTICLE XIII, Section 14.9 and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of ARTICLE XI shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of ARTICLE V, ARTICLE VI, ARTICLE VIII, and ARTICLE IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries (including the provision to Buyer of Replacement Product or Shortfall Damages) related to any period prior to termination of this Agreement.

## **Section 2.4 Early Termination.**

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

(b) **Early Termination for Failure to Provide Performance Security.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, if Seller fails to deliver the Project Development Security within ten (10) days after the Effective Date.

(c) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.4.

(d) **Early Termination for Failure to Achieve a Key Milestone.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, pursuant to Section 3.6(c).

(e) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date.

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date.

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

(h) **Early Termination for Exercise of ROFO or ROFR.** If pursuant to a written agreement entered into by Buyer, Buyer accepts the ROFO or the ROFR for any proposed sale of the Facility, this Agreement shall terminate effective upon the Closing of such sale to Buyer.

(i) **Early Termination for Exercise of Project Purchase Option.** If, pursuant to a written agreement entered into by Buyer, Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement, unless sooner terminated as otherwise herein provided.

(j) **Early Termination for Shortfall.** Buyer may in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon notice to Seller, pursuant to Section 9.5.

(k) **Early Termination Due to Environmental Effects.** Buyer may in its sole discretion and without penalty to Buyer, terminate this Agreement, in either case, effective upon notice to Seller, pursuant to Section 3.1.

(l) **Effect of Termination.** Except as otherwise provided herein, any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of a Party for Defaults occurring prior to such termination.

### **ARTICLE III DEVELOPMENT OF THE FACILITY**

**Section 3.1 CEQA Determinations.** Buyer has all rights and powers available to it as a responsible agency under CEQA to participate in the CEQA review of the Facility, including commenting on the lead agency's notice of preparation, consulting with and providing comments to the lead agency during preparation of the CEQA Documents. Buyer shall have full discretion to consider the CEQA Documents in order to reach its own decision under CEQA about the Facility, with full authority under CEQA to: (a) adopt and require feasible mitigation measures or alternatives to avoid or lessen significant environmental impacts resulting from the Facility; (b) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns; or (c) terminate this Agreement due to the Facility's significant adverse environmental impacts. On or before the thirtieth (30<sup>th</sup>) day after the lead agency's filing of a notice of determination under CEQA, or the thirtieth (30<sup>th</sup>) day after the Effective Date, whichever is later, Buyer may issue one of the following: (i) a notice confirming it has complied with CEQA Guidelines sections 15096(a), (f), (g), and (h) by considering the CEQA Documents, adopting applicable alternatives or mitigation measures, making findings, and filing a Notice of Determination for its approval of the purchase of Facility Energy (the "**CEQA Acceptability**

*Notice*”), or (ii) a notice that Buyer, based upon its independent review of the CEQA Documents, has determined not to approve the purchase of the Facility Energy hereunder, and to terminate this Agreement, the Option Agreement and the Storage Option Agreement due to the significant adverse environmental effects from the Facility specified in the CEQA Documents (the “**CEQA Unacceptability Notice**”). If Buyer fails to provide Seller with a notice by the end of such thirty (30) day period, so long as no challenge has been successfully made or is pending against the determination of the lead agency as of such date, Buyer will be deemed to have confirmed that Seller has complied with CEQA Guidelines. The Parties shall work together in good faith to make any necessary amendments to this Agreement required in connection with the CEQA review process. Upon delivery by Buyer of a CEQA Unacceptability Notice, this Agreement, the Option Agreement and the Storage Option Agreement shall automatically terminate.

### **Section 3.2 General.**

(a) **Project Design.** Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements and the requirements of the Ancillary Documents, including the characteristics and other requirements for the Facility set forth in Appendix B-1, and also subject to any conditions imposed by the lead agency or any responsible agency as part of the CEQA review of the Facility and which Seller deems acceptable.

(b) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain all Permits required to construct, maintain, and operate the Facility in accordance with the Requirements and for the performance of Seller’s obligations hereunder.

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

(d) **Construction.** Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. Seller shall develop, operate and maintain the Facility, at its sole risk and expense, and in compliance with the Requirements and applicable manufacturer’s and operator’s specifications and recommended procedures; *provided, however*, meeting these requirements shall not relieve Seller of its other obligations under this Agreement.

(e) **Other Information.** In addition to the reports required to be delivered under this Agreement, including Section 3.6, and Section 5.6, Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations, of Seller, its Subcontractors or the Facility, financial or otherwise, and other data concerning the Seller, its Subcontractors or the Facility as Buyer or Buyer’s Authorized Representative may, from time to time, reasonably request. Buyer and Buyer’s Authorized Representative shall be permitted to inspect the Facility from time to time upon reasonable notice to Seller and during reasonable business hours subject to Site safety protocols and orientation, but Buyer and Buyer’s Authorized Representative shall not interfere with the activities at the Facility.

**Section 3.3 Site Confirmation.** Seller represents and warrants that (a) Seller’s agents and representatives have visited, inspected and are familiar with the Site and its



surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, the presence, if any, of archaeological and cultural artifacts and topography, and solar radiation, air and water quality conditions, (b) Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, the presence, if any, of endangered species, handling and storage of materials and equipment, and availability and quality of labor and utilities), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section 3.3 shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer.

#### **Section 3.4 Subcontracts.**

(a) Seller shall cause provisions to be included in each Subcontract that provide: (i) Buyer with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols and orientation) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and (ii) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof or the exercise of Buyer's rights under Section 5.2.

(b) Seller shall deliver to Buyer a schedule of the performance of initial performance tests and all other tests required under each Subcontract.

**Section 3.5 Certification of Commercial Operation Date.** Not less than thirty (30) days prior to the date upon which Seller expects to achieve Commercial Operation, Seller shall give written notice to Buyer of such expected Commercial Operation Date. Seller shall provide Buyer with notice in accordance with Section 14.2 when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "**Commercial Operation**" have been satisfied. Within ten (10) Business Days of Seller's notice of Commercial Operation, Buyer shall in writing either accept or reject the notice in its reasonable discretion and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. If, during such ten (10) Business Day period, Buyer does not either accept or reject such notice, then for all purposes of this Agreement Buyer shall be deemed to have accepted such notice. The Commercial Operation Date shall be the date on which Buyer accepts or is deemed to have accepted such notice as provided in this Section 3.5.

### Section 3.6 Milestone Schedule.

(a) Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each milestone, a "**Milestone**" and each date by which a Milestone is to be completed, a "**Milestone Date**"). Seller shall achieve each Milestone by the Milestone Date therefor. Until the Commercial Operation Date, Seller shall provide Buyer with a report on a quarterly basis (until six (6) months prior to the scheduled Commercial Operation Date, at which time such reports shall be provided on a Monthly basis) that includes: (i) a description of the Site plan for the Facility, (ii) a description of any planned changes to the Facility or Site plan since the previously delivered report, (iii) a bar chart schedule showing progress to achieving the remaining Milestones, (iv) a chart showing the critical path schedule of major items and activities, (v) a summary of activities at the Facility during the previous Month, (vi) a forecast of activities during the then-current Month, (vii) a list of any issues that could impact Seller's achievement of Milestones by the applicable Milestone Dates, and (viii) pictures, in sufficient quantity and of appropriate detail, documenting construction and startup progress with respect to the Facility. If Seller anticipates that it will not achieve a Milestone by the applicable Milestone Date (as such date may be extended pursuant to this Section 3.6), Seller shall promptly prepare and deliver to Buyer a remedial action plan ("**Remedial Action Plan**"), which shall set forth (1) the anticipated period of delay, (2) the basis for such delay, (3) an outline of the commercially reasonable steps that Seller is taking to address the delay and to ensure that future Milestones, including the Guaranteed Commercial Operation Date, will be timely achieved, (4) a proposed revised date for achievement of the applicable Milestone and (5) such other information and in such detail as may be reasonably requested by Buyer. Except as set forth in Section 3.6(c), Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan; *provided, however*, that the foregoing shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any other Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Milestone.

(b) Each Milestone Date (including the Outside Commercial Operation Date) may be extended, on a day-for-day basis to the extent Seller is actually, demonstrably and unavoidably delayed in achieving such Milestone due to Force Majeure; provided that the Outside Commercial Operation Date shall not be extended beyond June 30, 2017, for any reason whatsoever.

(c) If Seller fails to achieve any Key Milestone by the applicable Milestone Date, including a failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.6(b)), Seller shall pay liquidated damages to Buyer in an amount equal to (i) the number of days between the Milestone Date and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer), multiplied by (ii) the applicable daily liquidated damage amount set forth for such Key Milestone in Appendix I (the "**Daily Delay Damages**"). For the avoidance of doubt, if multiple Key Milestones are missed, Seller shall pay Daily Delay Damages for each Key Milestone. If Seller fails to achieve any Key Milestone other than the Guaranteed Commercial Operation Date, by the date that is one hundred eighty (180) days after the Milestone Date for such Key Milestone, Buyer shall have the right in its sole discretion and without penalty to (1) terminate this Agreement for a Default under Section 13.4, or (2) allow Seller to continue to

pay the Daily Delay Damages to Buyer, during which time such Buyer shall not terminate the Agreement based on Seller's failure to timely achieve such Key Milestone. If Seller achieves the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, then Buyer shall refund to Seller, without interest, any amounts previously paid to such Buyer as Daily Delay Damages for failure to achieve the Environmental Compliance Key Milestone and/or the Site Control Key Milestone by the respective Milestone Date therefor. If Seller fails to achieve Commercial Operation by the Outside Commercial Operation Date (as such date may be extended pursuant to Section 3.6(b)), Buyer shall have the right in its sole discretion and without penalty to terminate this Agreement for a Default under Section 13.4.

(d) The damages that Buyer would incur due to Seller's failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Daily Delay Damages are a fair and reasonable calculation of such damages, and shall be Seller's sole liability and obligation, and Buyers' sole right and remedy, for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. Notwithstanding the foregoing, the Daily Delay Damages shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any Default occurring concurrently with, before or after Seller's delay in achievement of the applicable Key Milestone, or in connection with any termination for failure to achieve a Key Milestone by the Milestone Date therefor or Commercial Operation by the Outside Commercial Operation Date.

**Section 3.7 Decommissioning and Other Costs.** Unless a Closing occurs pursuant to the exercise by Buyer of the ROFO, ROFR or the Project Purchase Option, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

#### **ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY**

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

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

(b) At its sole expense, operate and maintain the Facility using a Qualified Operator in accordance with the Requirements;

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

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

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

#### **Section 4.2 Operation and Maintenance Plan.**

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

(b) **After Commercial Operation.** Following the Commercial Operation Date, Seller shall provide to Buyer on a quarterly basis, any regularly prepared operations and maintenance status reports of the Facility provided to WECC or the Facility Lenders. In addition to the other required and preventative maintenance actions required by this Agreement, Seller shall (and shall notify Buyer results of the following): (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify and perform all preventative maintenance requirements for the following calendar year; (iii) schedule and assign routine maintenance during operations, planned outages, as well as maintenance that can be conducted in parallel; (iv) conduct periodic maintenance to various equipment; (v) conduct periodic quality assurance and quality control activities and inspections in accordance with the Quality Assurance Program; and (vi) hire Subcontractors, as applicable to meet the Facility's maintenance, betterment, and improvement needs.

**Section 4.3 After Purchase Option Notice.** Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement, Seller shall, to the extent prepared in the ordinary course of business:

(a) devise and implement, or cause the Qualified Operator to devise and implement, an operations and maintenance plan, or implement an existing plan that includes the status of the Facility and each of the major components thereof in order to maintain such equipment in accordance with Prudent Utility Practices (the "**Operation and Maintenance Plan**"). Such Operation and Maintenance Plan shall be consistent with the requirements of any Facility Lender. Seller shall keep, or cause the Qualified Operator to keep, records with respect to inspections, maintenance, and repairs. The Operations and Maintenance Plan and all records associated therewith shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice; provided that Buyer shall at all times comply with Seller's or the Qualified Operator's written safety and security requirements and shall not interfere with Facility operations and activities when present at the Facility;

(b) provide Buyer, on a quarterly basis, with a detailed description in the form of a written report, regarding the on-going operations of the Facility during such quarter, setting forth the status of the operations of the Facility or any component thereof, including any equipment or other operational or maintenance failures, defects or other issues and any repairs,

replacements, or other remediation provided or to be provided therefor in a form which is reasonably acceptable to Buyer;

(c) as of January 15 of each calendar year, update the Operation and Maintenance Plan for the subsequent twelve (12) month calendar year period and submit the same to Buyer;

(d) perform routine and preventive maintenance actions in accordance with all applicable manufacturers' instructions, the Quality Assurance Program, Prudent Utility Practice, and the Operation and Maintenance Plan, including to: (i) conduct regular visual equipment inspections and log significant parameters ; (ii) identify all preventive maintenance requirements for a period of the following two (2) calendar years; (iii) schedule and assign routine maintenance during operations, planned outages, and maintenance that can be conducted in parallel (but not extend required actions) in the event of a forced or unscheduled outage, and outage and curtailment notifications (scheduled and unscheduled); (iv) conduct periodic maintenance to various equipment, and provide a report about any findings to Buyer; (v) conduct periodic quality control and quality assurance activities and inspections in accordance with Appendix J and provide reports thereof to Buyer; and (vi) hire Subcontractors, as applicable, to meet the Facility's plant's maintenance, betterment, and improvement needs.

**Section 4.4 Environmental Credits.** Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law; *provided* for the avoidance of doubt, Seller shall not use any Environmental Attributes to satisfy the foregoing obligation.

#### **Section 4.5 Outages.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified periods of time during each calendar year in accordance with Prudent Utility Practices and this Section 4.5 (such periods, the "**Major Maintenance Blockout**"). No later than one hundred twenty (120) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the anticipated Commercial Operation Date, and for each calendar year thereafter, no later than the deadline for providing the CAISO with proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyer with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "**Scheduled Outage Projection**") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall notify Buyer of any change in the Scheduled

Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally-scheduled date of the Scheduled Outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and shall, to the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages to occur between October 1 and May 1 of each year (or such other period as reasonably determined by Buyer from time to time) and coincident with planned transmission outages, but not to overlap with the Major Maintenance Blockout. In the event of a System Emergency, Seller shall use commercially reasonable efforts to reschedule any Scheduled Outage previously scheduled so that it occurs during the System Emergency.

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

(c) In addition to the requirements set forth in Section 4.5(a) and Section 4.5(b), the Parties shall cooperate to develop mutually acceptable procedures for addressing Scheduled Outages and any other outages arising in connection with the Project.

(d) In the event of any inconsistency between the provisions in this Section 4.5 and any applicable requirements of CAISO, the provisions of CAISO shall govern.

## **ARTICLE V**

### **COMPLIANCE DURING CONSTRUCTION OPERATIONS; SECURITY**

**Section 5.1 Guarantees.** Seller warrants and guarantees that it will perform, or cause to be performed, all development, engineering, design and construction in a good and workmanlike manner and in accordance with the Requirements. Seller warrants that to Seller's knowledge, after due inquiry, at the Commercial Operation Date, the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction and covenants and agrees that it will obtain from the manufacturer(s) of the equipment installed in the Facility limited warranties in line with current solar industry practices, but with no less than, in each case, twenty (20) year limited warranties on the photo voltaic panels installed at the Facility and five (5) year limited warranties on the inverters installed at the Facility. Seller further warrants that, throughout the Delivery Term: (a) the Facility will be free and clear of all Liens other than

Permitted Encumbrances, and (b) the Facility will be designed, constructed and tested in compliance with the Requirements. Seller also warrants and guarantees that throughout the Delivery Term, it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in full compliance with all Requirements applicable to the Facility. Without limiting the foregoing, Seller shall promptly repair and/or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall exercise commercially reasonable efforts to timely undertake all updates or modifications to the Facility, and its equipment and materials, including procedures, programming and software, required by Prudent Utility Practice. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with Prudent Utility Practice.

**Section 5.2 Buyers' Rights to Monitor in General.** Buyer shall have the right, and Seller shall permit Buyer and its Authorized Representative, advisors, engineers and consultants, to observe, inspect, and monitor the construction and operations and activities of the Facility, including (a) reviewing and monitoring all initial performance tests during Facility start-up and all tests required under the Subcontracts to be performed prior to each Milestone and achievement of Commercial Operation, and (b) performing such detailed examinations and inspections as, in the judgment of Buyer, are appropriate and advisable to determine that the Facility equipment and ancillary components of the Facility have been installed in accordance with the Requirements; provided that such activities on the part of Buyer and its Authorized Representative shall be coordinated with Seller so as to not interfere with the construction or operation of the Facility. Seller shall provide Buyer at least ten (10) Business Days prior notice of the commencement of any performance tests. Seller shall cause its personnel, consultants, and contractors to be available to, and cooperate in all reasonable respects with, Buyer and its Authorized Representative, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing, performance, operation, or maintenance thereof and Buyer's exercise of its rights under this Section 5.2.

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

**Section 5.4 Quality Assurance Program.** Seller agrees to maintain and



comply with a written quality assurance policy ("**Quality Assurance Program**") attached hereto as Appendix G, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

**Section 5.5 No Liens.** Except as otherwise permitted by this Agreement (including without limitation in connection with Tax Equity Financing utilizing a lease or inverted lease structure): (a) the Facility shall be owned by Seller during the Agreement Term; and (b) Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer.

**Section 5.6 Reporting and Information.** Seller shall provide to Buyer (a) Monthly reports of the operation of the Facility, which shall include (i) a performance summary of the Month- and Contract Year-to-date MWh delivery of Facility Energy, capacity factor, and availability (including actual availability vs. expected availability), (ii) reports of expected generation indicators of when Shortfall Energy may result; (iii) descriptions of weather, reasons for any downtime, maintenance or repairs, and Curtailment Periods and other curtailment events during the applicable Month, and (iv) a safety and environmental summary, and (b) such other information regarding the permitting, engineering, construction or operations of the Facility as Buyer may, from time to time, reasonably request.

**Section 5.7 Performance Security.**

(a) Within thirty (30) days after the Effective Date, Seller shall furnish to Buyer (i) one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E, or (ii) cash (to be held in an escrow account pursuant to an escrow agreement with a Qualified Issuer in form and substance satisfactory to Buyer (an "**Escrow Account**")), or a combination of the two, in the aggregate amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000), which shall guarantee Seller's obligations under this Agreement (the "**Project Development Security**"). Seller shall maintain the Project Development Security until Seller posts the Delivery Term Security pursuant to Section 5.7(b), or until Buyer is required to return the Project Development Security under Section 5.7(c).

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer (1) one or more letters of credit issued by Qualified Issuers in the form attached hereto as Appendix E, or (2) cash (to be held in an Escrow Account), or (3) a performance and payment bond from a Qualified Bond Issuer in form and substance acceptable to Buyer, or any combination of the foregoing (subject to the limitation on any performance and payment bond as provided below), in the aggregate amount of Six Million Nine Hundred Ten Thousand Dollars (\$6,910,000) which shall guarantee Seller's obligations under this Agreement (collectively, the "**Delivery Term Security**"); provided that under no circumstances shall any performance and payment bond provided as part of the Delivery Term Security exceed the amount of Two Million Four Hundred Ten Thousand Dollars (\$2,410,000) (the "**Bond Portion**"). From and after the end of the tenth (10th) Contract Year, the required amount of the Delivery Term Security shall be reduced to Five Million Four Hundred Ten Thousand Dollars (\$5,410,000) and shall consist of (1) one or more letters of credit issued by Qualified Issuers in



the form attached hereto as Appendix E, (2) cash (to be held in an Escrow Account), or (3) a performance and payment bond from a Qualified Bond Issuer in form and substance acceptable to Buyer, or any combination of the foregoing; provided that under no circumstances shall the performance and payment bond provided as part of the Delivery Term Security following the 10th Contract Year exceed Nine Hundred Ten Thousand Dollars (\$910,000). From and after the Commercial Operation Date, Seller shall maintain the Delivery Term Security in the required amount until the end of the Delivery Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.7(c).

(c) Buyer shall return the unused portion of the (i) Project Development Security, if any, to Seller promptly after: (A) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security toward the Delivery Term Security, or (B) the effective date of any early termination of the Agreement by Buyer promptly upon payment of all damages due and owing to Buyer, and (ii) Delivery Term Security, if any, to Seller promptly after: (A) the Agreement Term has ended, and (B) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(d) Buyer may draw on the Performance Security (i) at any time following the accrual of Daily Delay Damages hereunder in the amount of such Daily Delay Damages, (ii) upon Seller's failure to pay Buyer the Shortfall Damages prior to the end of the Shortfall Makeup Period as provided in Section 9.3, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder in the amount of such unpaid payment, including any Termination Payment. Buyer may draw all or any part of such amounts due to Buyer from any form of security provided under this Section 5.7, and in any sequence Buyer may elect, in its sole discretion. Any failure of, or delay by, Buyer in electing to draw any amount from the Performance Security shall in no way prejudice Buyer's rights to subsequently recover such amounts from the Performance Security or in any other manner. Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the applicable amount set forth in Section 5.7(a) or Section 5.7(b).

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, Seller shall replace the Performance Security from the Person that has suffered the Downgrade Event within ten (10) Business Days of such Downgrade Event. Such replacement security shall meet the requirements of this Section 5.7. If the replacement Performance Security is not provided by Seller, Buyer shall have the right to demand payment of the full amount of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(f) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer, in the amount required under this Section 5.7 within ten (10) Business Days of notice from Buyer

to Seller requesting such replacement Performance Security after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit to extend such letter of credit at least fifteen (15) Business Days prior to the expiration of such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes Bankrupt. If the replacement letter of credit is not delivered in accordance with this Section 5.7(f), Buyer shall have the right to demand payment of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that, if and to the extent such retained amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed in full.

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

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

## **ARTICLE VI PURCHASE AND SALE OF PRODUCT**

### **Section 6.1 Purchases by Buyer.**

(a) Subject to the terms of this Agreement, prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Test Energy for the applicable Contract Price set forth in Section 1 of Appendix A.

(b) Subject to the terms of this Agreement, and except as set forth in Section 6.1(d), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Facility Energy (other than Excess Energy) and the Replacement Product at the applicable Contract Price set forth in Section 2 of Appendix A.

(c) Subject to this Agreement, and except as set forth in Section 6.1(d), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Excess Energy at the applicable Contract Price set forth in Section 3 of Appendix A.

(d) Seller shall use good faith efforts to ensure that the Facility is CEC Certified following the Commercial Operation Date. During the period of time between the Commercial Operation Date and the day that is one (1) day following the date upon which Seller

delivers evidence to Buyer that the Facility is CEC Certified (the “*Pre-Certification Period*”), Buyer shall have the right to retain a portion of any payment to be made to Seller under Section 6.1(a) and Section 6.1(c) in an amount equal to the difference between (i) the applicable Contract Price, and (ii) SP-15 Price for the respective hours in which Facility Energy was generated. Buyer shall release such retained amount, without interest of any kind, within thirty (30) days following Buyer’s receipt from Seller of the CEC certificate confirming that the Facility is CEC Certified, but only to the extent that Buyer is able to apply the RECs generated by the Facility during the Pre-Certification Period towards compliance with Buyer’s obligations under RPS Law.

(e) If the City of Los Angeles, any other member of Buyer, and/or Buyer enters into a power purchase agreement or power purchase agreements with Seller or Affiliates of Seller before December 31, 2016, with regard to a generating facility that shares the same CAISO queue position as the Facility, the Contract Price under this Agreement for purchases following the Commercial Operation Date shall be adjusted to be the amount set forth in Appendix A-2 for the applicable aggregate capacity (MW<sub>AC</sub>) under contract with Seller and/or its Affiliates and the Contract Price for Test Energy and Excess Energy shall be an amount equal to the then-current Contract Price multiplied by 60%. By way of example, if the City of Los Angeles enters into a power purchase agreement with an Affiliate of Seller for 150MW, the Contract Price payable under this Agreement shall be adjusted to \$52.32 and the price of Test Energy and Excess Energy shall be adjusted to equal \$31.39.

**Section 6.2 Third Party Sales.** Except as provided in ARTICLE IX, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Except with the prior written consent of Buyer, Seller shall not sell or otherwise transfer all or any part of the Products required to be delivered by Seller under this ARTICLE VI, ARTICLE VII, ARTICLE VIII or ARTICLE X. A violation of this Section 6.2 shall be an immediate Default, and in addition to any other rights and remedies available to it under Section 13.2, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Products not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt written notice of the Replacement Price, together with back-up documentation.

**Section 6.3 Buyers’ Failure.** Unless excused by Force Majeure, a System Emergency, or Seller’s failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy or Replacement Product required to be received by Buyer under this ARTICLE VI, ARTICLE VIII, or ARTICLE X, Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages; *provided* that Seller shall use commercially reasonable efforts to resell any Facility Energy not able to be received by such Buyer. “*Cover Damages*” means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Energy not received by Buyer, plus any reasonable and documented costs incurred by Seller in connection with the resale or attempted resale of such Facility Energy. Seller shall provide Buyer prompt notice of the Cover Damages together with back-up documentation.

**Section 6.4 Nature of Remedies.** The remedy set forth in Section 6.2 is in addition to, and not in lieu of, any other right or remedy of Buyer, under this Agreement or otherwise, for failure of Seller to sell and deliver the Products as and when required by this Agreement. The remedy set forth in Section 6.3 is the sole and exclusive remedy of Seller for any failure by Buyer to receive the Product as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

## **ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS**

### **Section 7.1 In General.**

(a) Seller shall use all reasonable efforts consistent with Prudent Utility Practices and the other provisions of this Agreement to maximize the output of Facility Energy from the Facility except as otherwise set forth and in accordance with this Agreement. Subject to Buyer's role as Seller's Scheduling Coordinator for the Facility, Seller shall arrange for, and shall bear all risks and benefits associated with, delivery of all Facility Energy and Replacement Product to and at the Point of Delivery, including the arrangement of and payment for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Test Energy, Facility Energy and Replacement Product to and at the Point of Delivery at the CAISO grid, including interconnection costs, transmission losses to the Point of Delivery, the transmission of Facility Energy, and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery; *provided* that Replacement Product may be delivered at alternative locations as may be mutually agreed by the Parties.

(b) Buyer shall arrange for, and shall bear all risks associated with, acceptance and transmission of Facility Energy and Replacement Product from the Point of Delivery, including the arrangement of and payment for Transmission Services from the Point of Delivery at the CAISO grid, and shall Schedule or arrange for Scheduling and Transmission Services to deliver Facility Energy and Replacement Product to Buyer, including charges related to control area services, inadvertent energy flows, transmission losses, the transmission of Facility Energy and Replacement Product, and otherwise associated with the management of Buyer's loads.

**Section 7.2 Scheduling Coordinator; CAISO Cost Allocation.** Buyer or Buyer's designee shall act as Scheduling Coordinator for the Facility and shall have the full right and obligation to Schedule all Energy from the Facility (including but not limited to any Energy Seller needs to sell in mitigation of damages as required hereunder) in accordance with all CAISO and other applicable requirements. The Facility shall have a separate resource ID with CAISO for scheduling purposes. Seller shall pay Buyer Ninety One Thousand Dollars (\$91,000) each Contract Year for the Scheduling Coordinator services provided by Buyer to Seller. Buyer shall be financially responsible for and shall pay for all CAISO Costs; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement (i) incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement, (ii) incurred by Buyer because of any outages, including Scheduled Outages and Forced Outages, for which notice has not been provided as required under this Agreement, or (iii) to the extent arising as a result of Seller's failure to comply with a Curtailment Order under Section 7.4 if such failure results in

incremental costs to Buyer.

### **Section 7.3 Forecasting and Scheduling of Energy.**

(a) Except upon the occurrence of a curtailment under Section 7.4, Buyer, as Seller's Scheduling Coordinator, shall Schedule all Facility Energy and Replacement Energy (including all Energy sold by Seller in mitigation of damages hereunder) in accordance with the CAISO Tariff, NERC and WECC operating policies and criteria, and any other applicable guidelines, and the Scheduling and forecasting procedures provided in or developed under this Section 7.3, based on the then-most-current forecast of energy provided under the EIRP Forecast. Seller, at its own cost, shall install metering, telemetry and control equipment so as to be able to provide Facility Energy to the Point of Delivery and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders.

(b) Seller will take all actions, at its sole cost and expense, required to cause the Facility to be a certified Participating Intermittent Resource and to cause the Facility to become and remain a participant in PIRP, concurrently with the Commercial Operation Date. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with PIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term. All the provisions relating to Scheduling of the Facility and other matters covered by PIRP shall be interpreted and applied as may be reasonably necessary to comply with PIRP.

(c) Seller shall provide, or shall cause its designee to provide, the following non-binding forecasts, and any updates to such forecasts, to the Scheduling Coordinator based on the most current forecast of Facility Energy and Replacement Product:

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

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

(iii) No later than ten (10) Business Days before the beginning of each Month during the Delivery Term, a non-binding forecast of each day's average hourly deliveries of Facility Energy and Replacement Product for the following Month.

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

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy and Replacement Product

during the Delivery Term, a copy of a non-binding hourly forecast of deliveries of Facility Energy and Replacement Product for each hour of the immediately succeeding day. Any forecast provided on a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall, by 10:00 a.m. Pacific Prevailing Time, provide a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by the Scheduling Coordinator, a non-binding preschedule forecast of Facility Energy and Replacement Product via email. The prescheduled amounts of Facility Energy and Replacement Product shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Facility Energy and Replacement Product at the time. A forecast provided a day prior to any non-Business Day shall include forecasts for the next day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide a copy of any and all updates to the forecast of the Facility's availability from the then-current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the preschedule plan submitted to the Scheduling Coordinator.

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

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

(i) Read-only access to meteorological and related solar measurements, megawatt capacity and any other Facility availability information required in accordance with EIRP requirements;

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

updated from time to time based on advancements in technology in accordance with Prudent Utility Practices; and

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

(f) Seller will provide the Scheduling Coordinator and Buyer's real time operators with continuously updated non-binding hourly forecasts of deliveries of Facility Energy and Replacement Product for each hour of the succeeding twenty four (24)-hour period, in either electronic format, via an internet website accessible via secure login credentials, or via email in the form of an excel spreadsheet (or any combination thereof, so long as the Scheduling Coordinator or real time operator is able to readily access and utilize such forecasts), transmitted on an hourly basis. Seller shall reasonably cooperate with the Scheduling Coordinator to attempt to optimize the estimates for such time period two (2) hours prior to such forecasts. Seller shall reasonably cooperate with the Scheduling Coordinator to enable such forecasts to be prepared in accordance with mutually agreed upon communications protocols as they are implemented or upgraded from time to time in accordance with Prudent Utility Practices.

(g) Seller and the Scheduling Coordinator shall mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 7.3, in order to administer the provisions of this Agreement in compliance with all applicable Requirements and requirements of the Transmission Provider, CAISO, NERC, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. Seller and the Scheduling Coordinator shall promptly cooperate to make any reasonably necessary and appropriate modifications to such forecasting or Scheduling procedures as may be required from time to time.

#### **Section 7.4 Curtailment.**

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery immediately upon notice from Buyer, the CAISO, a Transmission Provider, or any balancing authority or reliability entity during Curtailment Periods affecting Buyer. Buyer shall be excused from receiving any Facility Energy from Seller and shall not be obligated to pay Seller for the amount of reduced Facility Energy arising during a curtailment under this Section 7.4(a); *provided* that the Parties shall calculate the amount of Deemed Generated Energy for reductions of deliveries of Facility Energy arising under this Section 7.4(a), for purposes of determining Seller's compliance towards its Guaranteed Generation. If required by Buyer, the CAISO, a Transmission Provider, or any balancing authority or reliability entity, Seller shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megawatt output in real-time by means of setpoints received from the SCADA system of Seller.

(b) In addition to the curtailments described in Section 7.4(a), Buyer may curtail deliveries of Facility Energy, at any time and for the duration specified by Buyer. Buyer shall provide a minimum of ten (10) minutes' notice to Seller of a request for curtailment under this Section 7.4(b), and Seller shall comply with such request in accordance with Prudent Utility Practices. In its curtailment notice to Seller, Buyer shall indicate the duration of the curtailment period, which shall be for a minimum of thirty (30) minutes, and the time at which Buyer requests Seller to resume delivery of the Facility Energy to Buyer. To the extent Buyer requests



any change in the duration of the requested curtailment period, Seller shall effectuate any such change no later than ten (10) minutes following notice from Buyer's notification to Seller of the proposed change to curtailment. Seller shall respond to Buyer curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Except for curtailments by Buyer under Section 7.4(a) for a System Emergency, Buyer shall pay Seller for any Deemed Generated Energy during any curtailment under this Section 7.4(b) in an amount equal to the Contract Price; *provided, however*, Seller, with Buyer acting as Scheduling Coordinator, shall use commercially reasonable efforts to sell Facility Energy (but not the Environmental Attributes or Capacity Rights associated therewith) equaling the amount of Deemed Generated Energy to third parties at a positive price to the extent permitted under the CAISO Tariff. To the extent any Facility Energy is sold to a third party under this Section 7.4(b), the obligation to pay the amounts set forth for a curtailment by Buyer under this Section 7.4(b) shall be reduced accordingly by an amount equal to the net proceeds Seller receives from such sales of Facility Energy (after subtracting any Scheduling fees, wheeling charges, and other associated costs, fees, and reasonable expenses incurred in connection with such sales). All Environmental Attributes and Capacity Rights associated with such Facility Energy sold to third parties shall be delivered at no additional cost to Buyer.

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

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

**Section 7.6 Title; Risk of Loss.** As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of the Energy at and from the Point of Delivery. Seller warrants that it will deliver all Energy, Replacement Product, Capacity Rights, and all of the associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and all of the associated Products shall pass from Seller to Buyer at the Point of Delivery; *provided that* title to and risk of loss as to any Replacement Energy specified by Buyer to be delivered to a point or points of interconnection other than the Point of Delivery pursuant to Section 9.2 and all of the associated Environmental Attributes shall pass from Seller to Buyer upon delivery of such



Replacement Energy to such point or points.

#### **Section 7.7 RPS and EPS Compliance.**

(a) Seller warrants and guarantees that from the time it receives notice from the CEC that the Facility is CEC Certified, and at all times thereafter until the expiration or earlier termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant (if EPS Law is applicable to the Facility), except if the Facility fails to be RPS Compliant or EPS Compliant (if EPS Law is applicable to the Facility) as a result of (i) a Change in Law making it impossible, after the use of commercially reasonable efforts as required under Section 7.7(b), for the Facility to be RPS Compliant or EPS Compliant, or (ii) any repeal of the RPS Law or EPS Law.

(b) If a Change in Law occurs after the Commercial Operation Date that (x) does not repeal the RPS Law or the EPS Law, (y) causes the Facility to cease to be RPS Compliant and/or EPS Compliant and (z) reduces the value to Buyer of the Environmental Attributes, then Seller shall use commercially reasonable efforts to comply with such Change in Law and cause the Facility to be RPS Compliant and EPS Compliant. If, notwithstanding such commercially reasonable efforts, the Facility is still not RPS Compliant and EPS Compliant due to the occurrence of a Change in Law, then Buyer shall have the option to change the Contract Price to the Pnode Price (the "**Pnode Price Option**") or such other index price as mutually agreed to by the Parties in writing; provided such Pnode Price Option must be exercised in writing no later than two (2) years following an applicable Change in Law. If Buyer exercises the Pnode Price Option, the Contract Price shall be the Pnode Price for the respective hours in which Facility Energy was generated despite the failure of the Facility to be RPS Compliant and EPS Compliant, unless Seller delivers Replacement Product that is RPS Compliant and EPS Compliant from a RPS Compliant and EPS Compliant source. If Buyer exercises the Pnode Price Option: (i) the Pnode Price shall be subject to the limitation that the average price for Facility Energy paid by Buyer in any Month shall not exceed the Contract Price nor be less than eighty-five percent (85%) of the Contract Price; (ii) Seller shall retain the Environmental Attributes; and (iii) Buyer shall be entitled to the Capacity Rights generated.

(c) From time to time and at any time requested by Buyer or Buyer's Authorized Representative, Seller will furnish to Buyer, Buyer's Authorized Representative, Governmental Authorities, or other Persons designated by any Buyer, all certificates and other documentation reasonably requested by Buyer or Buyer's Authorized Representative in order to demonstrate that the Facility, the Facility Energy, and the associated Environmental Attributes were or are RPS Compliant and EPS Compliant.

### **ARTICLE VIII ENVIRONMENTAL ATTRIBUTES**

**Section 8.1 Transfer of Environmental Attributes.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in

and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term associated with the Facility Energy and any Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Contract Price.

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

**Section 8.3 Environmental Attributes.** Upon the request of Buyer or Buyer's Authorized Representative, Seller shall take all actions and execute all documents or instruments necessary under applicable law regulations, guidebooks promulgated by the CEC or PUC, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term and Seller shall file with the CEC and any other applicable Persons all materials and documents required to demonstrate that the Facility is entitled to be CEC Certified.

**Section 8.4 WREGIS.** In furtherance and not in limitation of Section 8.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall register with WREGIS to evidence the transfer of any Environmental Attributes under applicable law or any voluntary program ("**WREGIS Certificates**") associated with Facility Energy or Replacement Product in accordance with WREGIS reporting protocols and WREGIS Operating Rules and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, at the option of Buyer's Authorized Representative, Seller shall transfer WREGIS Certificates using the Forward Certificate Transfer method as described in WREGIS Operating Rules from Seller's WREGIS account to Buyer's WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Facility, maintaining its account, acquiring and arranging for a Qualified Reporting Entity ("**QRE**") and any applicable QRE agreements, and transferring WREGIS Certificates to Buyer, Buyer's Authorized Representative, or any other designees. Buyer shall be responsible for its WREGIS expenses associated with maintaining its own account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In addition to the foregoing, Seller shall document the production and transfer of Environmental Attributes under this Agreement to Buyer by delivering to Buyer an attestation in

substantially the form attached as Appendix D for the Environmental Attributes associated with Facility Energy or Replacement Product, if any, measured in whole MWh, or by such other method as Buyer shall designate.

**Section 8.5 Further Assurances.** In addition to and not in limitation of Section 8.4, Seller shall document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for the Environmental Attributes associated with Facility Energy or included with Replacement Product, if any, for the preceding Month in the form of the attestation set forth as Appendix D. At Buyer's Authorized Representative's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, each Party shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

## **ARTICLE IX MAKEUP OF SHORTFALL ENERGY**

**Section 9.1 Makeup of Shortfall.** Within thirty (30) days after (i) the end of the first full Contract Year and (ii) the end of each succeeding Contract Year, Seller shall provide Buyer with a calculation of Facility Energy for such Contract Year. If Seller fails during any Contract Year to deliver Facility Energy in an amount equal to the Guaranteed Generation for the Facility, then Seller shall make up the shortfall of Facility Energy ("**Shortfall Energy**") in accordance with this ARTICLE IX.

**Section 9.2 Replacement Product.** During the Shortfall Makeup Period, the amount of Shortfall Energy shall first be reduced by the amount of any (a) Facility Energy or Deemed Generated Energy delivered or deemed to be delivered above the Guaranteed Generation, including Excess Energy, during the applicable Shortfall Makeup Period, and (b) Replacement Product delivered by Seller during the Shortfall Makeup Period. Such Replacement Product shall be delivered to the Point of Delivery or such other point of delivery as is mutually agreed upon by the Parties (which point of delivery shall be deemed the "Point of Delivery" for such Replacement Product for purposes of ARTICLE VII and the other Scheduling and delivery provisions hereof) and on a delivery schedule mutually agreed to by Seller and Buyer. Any additional costs or expenses associated with delivery of Replacement Product to a Point of Delivery designated under this Section 9.2 shall be borne by Seller. To the extent Seller is unable to deliver or provide sufficient Facility Energy, Deemed Generated Energy, or Replacement Product to make up the remaining Shortfall Energy, then Seller shall, at the end of the Shortfall Makeup Period, pay Buyer damages in accordance with Section 9.3. Notwithstanding the foregoing, at the end of each RPS Compliance Period during the Delivery Term, if there is any Shortfall Energy at such time, Seller shall pay Buyer damages in accordance with Section 9.3 for the amount of Shortfall Energy in the last calendar year of such RPS Compliance Period.

**Section 9.3 Shortfall Damages.** If Seller fails to make up the full amount of any Shortfall Energy by the end of the Shortfall Makeup Period, Seller shall within sixty (60) days after the end of the applicable Shortfall Makeup Period, pay Buyer damages, which damages shall be an amount, for each MWh of remaining Shortfall Energy, equal to the positive difference, if any, obtained by subtracting (a) the Contract Price from (b) the Replacement Price, and adding, in the case of the positive difference, the amount of all documented and reasonable out-of-pocket costs and expenses incurred by such Buyer to purchase such Replacement Product ("**Shortfall Damages**"). If Seller fails to pay Buyer the Shortfall Damages within sixty (60) days after the end of the Shortfall Makeup Period, Buyer shall have the right to immediately draw the applicable amount of Shortfall Damages owed to Buyer from the Delivery Term Security.

**Section 9.4 Availability Requirement.** Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable, other than the Capacity Rights.

**Section 9.5 Shortfall Energy Termination.** If Seller fails during any two consecutive Contract Years to deliver at least Sixty Two and One Half percent (62.5%) of the Guaranteed Generation for such Contract Years then Buyer, in its sole discretion, may within thirty (30) days after the end of such Contract Year, elect to either (a) collect Shortfall Damages for the Shortfall Energy pursuant to Section 9.3 and terminate this Agreement; or (b) allow Seller to cure such failure by providing Buyer with Replacement Product or Shortfall Damages as described in Section 9.2 and Section 9.3.

## **ARTICLE X CAPACITY RIGHTS**

**Section 10.1 Capacity Rights.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of Seller's rights, title and interest in and to the Capacity Rights. The consideration for the transfer of Capacity Rights, if any, is contained within the Contract Price. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

**Section 10.2 Covenant Regarding Capacity Rights.** Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not in the future assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. During the Agreement Term, Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, its own risk and expense, report to any Person that the Capacity Rights belongs to it.

**Section 10.3 Further Assurances.** Seller shall execute and deliver such documents and instruments and take such other action as required by the CAISO and as Buyer's

Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

## **ARTICLE XI**

### **BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES**

**Section 11.1 Billing and Payment.** Billing and payment for all Products shall be as set forth in this ARTICLE XI.

#### **Section 11.2 Calculation of Energy Delivered; Invoices and Payment.**

(a) Not later than the tenth (10th) day of each Month, commencing with the next Month following the Month in which Facility Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount due for the preceding Month from Buyer to Seller for Facility Energy, Capacity Rights and Environmental Attributes. Seller shall calculate the amount of Facility Energy from meter readings at the Electric Metering Devices maintained pursuant to Section 11.6, adjusting for any applicable station load, transformation losses and transmission losses to the Point of Delivery in accordance with a methodology agreed to by Buyer. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment or services covered by the invoices, and shall be sent to the address set forth in Appendix J or such other address as Buyer may provide to Seller. Seller shall separately provide in such invoice (i) Seller's computation of any allocation for Replacement Product delivered by Seller and taken by Buyer under this Agreement during the preceding Month, any Deemed Generated Energy calculated during the preceding Month (including any supporting documentation associated therewith) and (ii) any other amounts due to Seller, including amounts due under Section 6.3. Any electronic information delivered by Seller under this ARTICLE XI shall be in a format such as Microsoft Excel (or its equivalent) that allows Buyer to cut, paste or otherwise readily use and work with such information or documentation or as otherwise mutually agreed by the Parties.

(b) Concurrently with the delivery of each Monthly invoice, Seller shall deliver attestations of all Environmental Attribute transfers (including those transferred with WREGIS) substantially in the form set forth in Appendix D.

(c) Subject to Section 11.2(d) and Section 11.3, not later than the thirtieth (30th) day after receipt by Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the thirtieth (30th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such Monthly invoice.

(d) Notwithstanding Section 11.2(c), if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information, Buyer shall notify Seller thereof within thirty (30) days after receipt of an invoice from Seller, and timely pay the amounts set forth in such Monthly invoice not related to Deemed Generated Energy. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy

calculation, or on the date mutually agreed to by the Parties, Buyer shall pay to Seller the amount specified in the invoice or notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice shall be subject to the provisions of Section 11.3.

(e) Seller shall, in subsequent invoices, adjust previously invoiced amounts to reflect (i) adjustments pursuant to Section 11.3, or (ii) adjustments, reconciliations or final settlements with WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (which shall be without interest of any kind), *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than one (1) year after the billing period.

(f) Except with respect to disputed invoices where the dispute is first raised within six months after the applicable Monthly billing period, Buyer shall not be required to make invoice payments if the invoice is received more than six (6) Months after the applicable Monthly billing period.

**Section 11.3 Disputed Invoices.** If any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "**Interest Rate**" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

**Section 11.4 Right of Setoff.** In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, each Party shall have the right at any time or from time to time without notice to other Party or to any other Person, any such notice being hereby expressly waived, to set off against any amount due a Party from the other Party under this Agreement or otherwise any amount due such Party from the other Party under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation.

**Section 11.5 Records and Audits.** Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related Subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media

such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, the expiration or termination date of this Agreement, or final settlement of all disputes, claims, or litigation, whichever is later. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at Seller's principal business office or any other of Seller's offices as mutually agreed upon by Buyer and Seller, at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and required to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable governmental audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days after notice to Seller of the identified overpayment. If an Authorized Auditor's examination or audit reveals that Buyer's overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit, which examination or audit expenses and costs shall be paid by Seller to Buyers within fifteen (15) days after notice to Seller. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 11.5 by inserting this Section 11.5 into each Subcontract.

#### **Section 11.6 Electric Metering Devices.**

(a) Facility Energy shall be measured using a CAISO-approved revenue-quality Electric Metering Device that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. Seller shall also install an Electric Metering Device at



the Facility at a location agreed to by Buyer. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer, which data shall be accessible to, and usable by, Buyer. In addition to providing Buyer with its meter data, Seller shall use commercially reasonable efforts to support any efforts by Buyer to obtain CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports from the CAISO. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised Monthly invoices, pursuant to this ARTICLE XI covering the entire applicable time period in order to fully conform such adjustments to the meter data. Seller shall submit any revised invoices no later than thirty (30) days after the date on which the CAISO provides Seller with binding adjustments to the meter data.

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

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus one percent (+/- 1.0%), an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy, such adjustment to be made by the Scheduling Coordinator. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the direction of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

**Section 11.7 Taxes.** Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state, and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site or any other assets of Seller, the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery to such Buyer. If Seller is required by a Requirement of Law to remit or pay Taxes that are the responsibility of Buyer hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from



payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

## **ARTICLE XII REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

(a) Buyer is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such Buyer's regulatory or governing bodies, other than that which has been obtained; *provided* that further authorizations from such Buyer's regulatory or governing bodies will be required for Buyer to exercise the Project Purchase Option; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

**Section 12.2 Representations and Warranties of Seller.** Seller makes the following representations and warranties to Buyer as of the Effective Date and continuing throughout the Agreement Term:

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

(b) Seller has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller, and Seller has delivered to Buyer (i) copies of all

resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Seller certifying as to the names and signatures of the authorized representatives of Seller.

(c) The execution, delivery and performance by each Seller of this Agreement and any Ancillary Documents to which it is a party have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) The execution and delivery of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and any Ancillary Documents, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of any Seller (except as contemplated hereby), and Seller has obtained all Permits (including the CEQA Determinations) required for the construction, operation, and maintenance of the Facility in accordance with the Requirements and the performance of Seller's obligations hereunder and under the Ancillary Documents to which Seller is a party, or such Permits are reasonably expected to be timely obtained in the ordinary course of business.

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

(f) 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 or any Ancillary Documents.

(g) 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 or any Ancillary Document.

(h) (i) The corporate organizational structure and ownership of Seller and Parent Entity is set forth on Schedule 12.2(h), (ii) Seller is a Special Purpose Entity, (iii) all of the membership interests in Seller are directly owned and controlled by sPower Finco 5, LLC, a Delaware limited liability company; and (iv) all of the membership interests in sPower Finco 5, LLC are directly owned and controlled by sPower Solar Holdings LLC, a Delaware limited

liability company. The limited liability company interests in each of Seller, and each Parent Entity have been duly issued under and authorized by their respective limited liability company agreements and in accordance with applicable Requirements of Law.

(i) Seller has (i) not entered into this Agreement or any Ancillary Document to which it is a party 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 and any Ancillary Document to which it is a party. No petition in bankruptcy has been filed against Seller, and Seller has never made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) Seller has no reason to believe that any of the Permits (other than the CEQA Determinations) required to construct, maintain or operate the Facility in accordance with the Requirements will not be timely obtained in the ordinary course of business and by the Milestone Date required therefor.

(k) Tax returns and reports of Seller required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon Seller and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller knows of no proposed Tax assessment against it that is not being actively contested by it in good faith and by appropriate proceeding.

(l) Seller owns or possesses or will acquire all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement, and Seller's use thereof does not infringe on the intellectual property rights of third parties.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Products except as provided herein.

(n) Seller reasonably expects to obtain the CEQA Determinations in the ordinary course of business and is in compliance with any mitigation plans, monitoring programs or other requirements associated therewith.

### **Section 12.3 Covenants of Seller Related to Site Control Documents.**

(a) A copy of the Site Control Documents duly executed by Seller and the counterparties thereto shall be delivered to Buyer promptly upon execution thereof, but in no event any later than the Site Control Milestone Date.

(b) Seller shall on or before the Site Control Milestone Date (i) cause the execution (if applicable), delivery, and performance by Seller of the Site Control Documents to be duly authorized by all necessary action by Seller and to constitute the legal, valid, and binding obligation of Seller, (ii) maintain Site Control at all times after the Site Control Milestone Date, and (iii) provide Buyer with prompt notice of any change in the status of Seller's Site Control.

(c) For each Site Control Document capable of being recorded, Seller shall cause either a memorandum of such Site Control Document or the Site Control Document itself to be recorded in the applicable county for such Site Control Document promptly upon execution and delivery thereof.

(d) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Site Control Documents, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could materially impair or tend to impair the rights of Seller under the Site Control Documents, or could reasonably be likely to be grounds for any Lessor or any other counterparty to Seller thereunder to terminate a Site Control Document.

(e) Seller shall use commercially reasonable efforts to enforce the provisions of the Site Control Documents short of termination thereof such that Seller may enjoy all of the rights granted to Seller thereunder.

(f) Seller shall give Buyer notice of any of the following of which Seller has actual notice upon receipt of actual notice or becoming aware of such occurrence: (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under any of the Site Control Documents, or the receipt by Seller of any notice from any Lessor, or any other counterparty to Seller thereto, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Site Control Document. Buyer, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under a Site Control Document. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(g) After Seller's execution and delivery of a Site Control Document, Seller shall not terminate or cancel, or permit or suffer the termination or cancellation of any Site Control Document. In addition, after Seller's execution and delivery of a Site Control Document, Seller shall not (i) modify, change, amend or assign the Site Control Document in any way that would be reasonably likely to result in a material adverse effect on Seller's performance of its obligations under this Agreement or would be reasonably likely to result in a material adverse effect on Buyer's rights under the Option Agreement or Storage Option Agreement, or (ii) waive, excuse, condone, or in any way release or discharge the counterparty to any Site Control Document of or from the obligations, covenants, conditions, and agreements by such counterparty under such Site Control Document in each case, without the prior written consent of Buyer.

(h) On or before the Commercial Operation Date Seller shall use commercially reasonable efforts to cause each counterparty under a Site Control Document to provide Buyer with an estoppel certificate that states that: (i) the relevant Site Control Document is in full force and effect and has not been supplemented, amended, assigned or subleased;

(ii) there are no uncured defaults under the relevant Site Control Document and no event or circumstance has occurred and is continuing which, with the giving of notice, the passage of time or both, would constitute a default under the Site Control Document; (iii) for any Site Control Document that does not recognize and allow for the Right of First Refusal, Right of First Offer and Project Purchase Option, evidences such counterparty's consent to Seller's grant of the Right of First Refusal, Right of First Offer and Project Purchase Option and to the assignment of such Site Control Document to Buyer following exercise of the Right of First Refusal, Right of First Offer or Project Purchase Option; and (iv) evidences such counterparty's consent to the right of Buyer to cure any payment default by Seller under the Site Control Documents prior to termination thereof.

(i) Seller shall (i) obtain Buyer's approval prior to the execution and delivery by Seller of any Site Control Document for land not shown on Appendix N and (ii) provide to Buyer copies of all Site Control Documents; *provided* Buyer's approval of Site Control Documents shall not be unreasonably withheld, conditioned, or delayed.

(j) Upon any payment by Buyer to cure any default of Seller under a Site Control Document that prevents termination of such Site Control Document or the exercise of any other remedy of the counterparty thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall reimburse the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such reimbursement by Seller.

(k) As long as this Agreement is in effect, there shall be no merger of any Site Control Document or of the leasehold estate or easement created thereby with the fee estate in the property subject to the Site Control Document and Seller shall not acquire any interest in such fee estate without the prior written consent of Buyer.

(l) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller, Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the sole and exclusive right to instruct Seller to elect to assume and assign or reject the Land Lease pursuant to Section 365 of the Bankruptcy Code, and Seller agrees that any election, if made by Seller or Seller's trustee without the prior consent of Buyer shall be void at inception and of no force or effect. Absent (i) the consent of any Facility Lender or Tax Equity Investor to a rejection of the Land Lease, or (ii) Seller's representation that (a) it cannot cure, or provide adequate assurance that it will promptly cure, all defaults under the Land Lease, (b) it cannot compensate, or provide adequate assurance that it will promptly compensate, a party other than Seller to the Land Lease for any actual pecuniary loss to such party arising from such default, and (c) it cannot provide adequate assurance of future performance under the Land Lease, Buyer shall instruct Seller to assume the Land Lease. Buyer shall have the right, but not the obligation, to instruct Seller or Seller's trustee as to such assumption and assignment of the Land Lease, and Seller shall, or shall cause Seller's trustee to, comply with such instructions.

(m) In the event of a Lessor Bankruptcy and the resulting termination, rejection or disaffirmance by the Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Land Lease pursuant to the Bankruptcy Code,

Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the right to make or refrain from making any election available to lessees under the Bankruptcy Code (including the election available pursuant to Section 365(h) of the Bankruptcy Code and any successor provision) and Seller agrees that any such election, if made by Seller without the prior written consent of Buyer (which Buyer would not anticipate granting due to the important of the Land Lease as security) shall be void at inception and of no force or effect. Without limiting the generality of the foregoing sentence, Seller shall not, without Buyer's prior written consent, elect to treat the Land Lease or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of the Land Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor, and any such election made without such consent shall be void at inception and of no force or effect. At the request of Buyer, Seller will join in any election made by Buyer under the Bankruptcy Code and will take no action in contravention of the rights granted to Buyer pursuant to this (m).

(n) In the event of a Lessor Bankruptcy and the resulting termination, rejection or disaffirmance by the Lessor under the Land Lease (whether as debtor in possession or otherwise) or by any trustee of such Lessor pursuant to the Bankruptcy Code, and Buyer elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the Land Lease, then Seller shall remain in possession and shall perform all acts necessary for Seller to retain its right to remain in such possession, whether such acts are required under the then-existing terms and provisions of the Land Lease or otherwise.

**Section 12.4 Covenants of Seller to Provide Quarterly Attestations.** Seller shall provide to Buyer each calendar quarter a certificate executed by an authorized officer of Seller certifying that (a) the representations and warranties set forth in this Agreement remain true and correct as of the date of such certificate, and (b) there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default hereunder; *provided*, that with respect to any attestation as to any representation and warranty set forth in Section 12.2(h), Seller may update such attestation and Schedule 12.2(h) in order to account for any mergers, transfers, consolidations, assignments, restructurings, or similar transactions to the extent that such transactions either (A) do not constitute a Change of Control or (B) have been consented to by Buyer.

#### **Section 12.5 Additional Covenants of Seller.**

(a) **Material Adverse Effect.** In the event of a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller or an event of default by Seller or the operator under the O&M Agreement, Seller shall promptly thereafter notify Buyer, and Seller shall, within thirty (30) days after providing such notice, provide Buyer with a plan or report, including the report (at Seller's sole cost and expense) of a Licensed Professional Engineer with respect to any operational problem related to the Facility if reasonably requested by Buyer that demonstrates in detail reasonably acceptable to Buyer, that the material adverse effect or event of default by Seller or the operator under the O&M Agreement has been mitigated or cured, or will be mitigated or cured within a reasonable period or within the cure periods provided therefor (and listing, in detail, the actions that Seller has taken, is taking, or proposes to take with respect to such condition or event), or that such material adverse effect or event of default by Seller or the operator under the O&M Agreement will not

have a material adverse effect on the performance of Seller under this Agreement. A failure to provide such plan or report within thirty (30) days, or to diligently undertake any of the actions set forth under such plan or report, will be deemed a failure by Seller to perform under Section 13.1(b).

(b) **Permits.** Seller shall timely obtain all Permits required for the construction of the Facility, the performance of such Seller Party's obligations hereunder and under the Ancillary Documents to which such Seller Party is a party, and the operation of the Facility in accordance with the Requirements.

(c) **Special Purpose Entity.** Seller shall remain at all times throughout the Agreement Term a Special Purpose Entity.

(d) **Facility Debt.** Seller shall not permit Facility Debt in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost. On January 1, April 1, July 1, and October 1 of each year commencing on the Effective Date, Seller shall provide to Buyer a certificate of an officer, director or member of Seller attesting to the Facility Debt as being equal to or less than seventy percent (70%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including Seller's most recent annual and quarterly financial statements and a statement of the Facility's then-current Facility Debt and Facility Cost values.

#### **Section 12.6 Storage Technology.**

(a) **[Reserved]**

(b) **Interconnection.** Provided that Buyer provides reasonable direction as to storage technology and design, no later than sixty (60) days following the Effective Date, Seller shall complete and submit a material modification request (the "**MMR**") with the CAISO for the installation of an energy storage system to the Facility location, in an amount equal to 24% of the Contract Capacity, or as otherwise mutually agreed by the Parties (the "**Storage Capacity**"). Seller shall promptly forward all material communication with the CAISO to Buyer regarding the MMR. If CAISO determines that the MMR does not constitute a material modification, Seller shall use commercially reasonable efforts to reserve the Storage Capacity for Buyer's installation of an energy storage system in accordance with the Storage Option Agreement. If CAISO determines that such request is a material modification, at Buyer's request, Seller shall assist Buyer with a new interconnection request. Buyer shall pay all costs exceeding \$91,000 in connection with the MMR.

(c) **Land.** On or before the Site Control Milestone Date, Seller shall reserve land on the Site to accommodate a storage facility configuration at the Facility inverter locations or at the Facility Substation location, or any other location mutually agreed to by the Parties and shall provide evidence to Buyer of such reservation of land; provided that Seller shall not be required to dedicate more than 2,000 square feet of land per MW of installed Storage Capacity.

(d) **Permit.** Provided that Buyer provides reasonable direction as to storage technology and design, Seller shall, at Buyer's request, use commercially reasonable efforts, but incurring no more than \$91,000 of costs, to obtain a conditional use permit modification to allow

for the installation and operation of an energy storage system at the Facility location.

(e) **No Other Storage.** Seller shall not incorporate into, or utilize any storage technology or capability whatsoever with the Facility, except in connection with Buyer's exercise, if any, of its option under the Storage Option Agreement, or as required by any Governmental Authority other than Buyer or its Participating Members.

### **ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE**

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

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate);

(b) **Performance Default.** Failure by a Party to perform any of its duties or obligations under this Agreement (other than any failure that is separately listed as a Default of Seller under this Section 13.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure cannot be cured within such thirty (30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to sixty (60) additional days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification or other statement made by a Party in this Agreement or any Ancillary Document, or, in the case of Seller, made in a certification delivered pursuant to Section 12.4, is false or inaccurate at the time made and materially and adversely affects Seller's ability to perform its obligations hereunder; *provided* that no Default shall exist if such falsity or inaccuracy is remedied within thirty (30) days after receipt of notice thereof from another Party.

(d) **Bankruptcy.** Bankruptcy of Buyer or any Seller Party.

(e) **Performance Security Failure.** (i) The failure of Seller to furnish Performance Security by the times set forth in Section 5.7, or the failure of Seller to maintain or replace the Performance Security in compliance with Section 5.7, (ii) the failure of any of the Performance Security to be in full force and effect in accordance with Section 5.7 or (iii) the issuer of any Performance Security provided by Seller hereunder contests the validity or enforceability of the Performance Security or the letter of credit provider denies that it has any liability in respect of any Performance Security and such Performance Security is not replaced in compliance with Section 5.7.

(f) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix F that is not cured within seven (7) after receipt of notice of such failure from Buyer.



(g) **Fundamental Change.** Except as permitted by Section 14.7, (i) a Party makes an assignment of its rights or delegation of its obligations under this Agreement, the Option Agreement, the Storage Option Agreement, or any Site Control Document, or (ii) a Change in Control occurs.

(h) **Site Control Document Default.** Seller breaches any of its obligations under Section 12.2, which breach is not cured within ten (10) days after receipt of notice thereof from Buyer, other than a breach of Seller's obligations under Section 12.3(g), which shall immediately trigger a Default hereunder.

(i) **Casualty.** Seller fails to meet its obligations under Section 14.19(b).

(j) **Key Milestone.** Seller fails to achieve any Key Milestone (other than Commercial Operation) on or before the date that is one hundred eighty (180) days after the Milestone Date for such Key Milestone.

(k) **Commercial Operation Date.** Seller fails to achieve Commercial Operation on or before the Outside Commercial Operation Date.

### **Section 13.2 Default Remedy.**

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

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

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity including a termination of this Agreement pursuant to Section 13.4. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 13.4, and (iii) exercise of the Project Purchase Option as provided in the Option

Agreement. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power by Buyer.

**Section 13.3 Cure Rights of Facility Lender.** In connection with any financing or refinancing of the Facility, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement that is commercially reasonable and customary in the industry for limited or non-recourse project financing transactions and in form and substance satisfactory to Buyer; *provided, however*, the terms of such financing, documentation relating thereto and consent shall not conflict with the applicable terms and conditions of this Agreement. (such consent, the “**Facility Lender Consent**”). The Facility Lender Consent shall provide the Facility Lender or its agent notice of the occurrence of any Default described in Section 13.3 and the opportunity to cure any such default. Seller shall pay Buyer for the reasonable costs and expenses incurred by Buyer arising in connection with the negotiation of the Facility Lender Consent (including reasonable attorneys’ fees and expenses) as set forth in Section 14.7.

#### **Section 13.4 Termination for Default.**

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

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

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

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is a positive number, the Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation of the Termination Payment shall be submitted to the dispute resolution process provided in Section 14.3. Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) as determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

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

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

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

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

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

(g) At the time for payment of any amount due under this Section 13.4, each Party shall pay to the other Party, all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.4(a)).

#### **ARTICLE XIV MISCELLANEOUS**

**Section 14.1 Authorized Representative.** Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an “**Authorized Representative**”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternates if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. To the extent that an Authorized Representative’s contact information is not provided in Appendix C, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative’s contact information.

**Section 14.2 Notices.** With the exception of billing invoices pursuant to Section 11.1, all notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix J, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of delivery in person, by reliable overnight courier, or by registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, approvals, waivers and other communications through alternate methods, such as electronic mail.

#### **Section 14.3 Dispute Resolution.**

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

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

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3(a) and Section 14.3(b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then a Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.12 and Section 14.13 of this Agreement.

(d) In addition to the Dispute resolution process set forth in this Section 14.3, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

#### **Section 14.4 Further Assurances; Change in Electric Market Design.**

(a) Each Party agrees to execute and deliver all further instruments and documents, and take all further actions not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either 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 either Party may submit issues pertaining to changes to this Agreement to the Dispute resolution process set forth in Section 14.3. Notwithstanding the foregoing, 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.

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

#### **Section 14.6 Force Majeure.**

(a) A Party shall not be considered to be in Default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to

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

(b) The term "**Force Majeure**" means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or other occurrence that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an "**Unexcused Cause**"): (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Facility Energy at a price in excess of those provided in this Agreement or Buyer's ability to purchase Energy at a price lower than those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service; (7) failure of third parties to provide goods or services essential to a Party's performance; (8) Facility or equipment failure of any kind; (9) any changes in the financial condition of Buyer, any Seller Party, the Facility Lender or any subcontractor or

supplier affecting the affected Party's ability to perform its obligations under this Agreement; or (10) Seller's inability to obtain sufficient fuel, including due to lack of wind, sun or other fuel source of an inherently intermittent nature, or power to operate the Facility.

(c) Buyer may terminate this Agreement if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event.

(d) Any termination of this Agreement under Section 14.6(c) shall be "no-fault" and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, including Seller's obligation to make payments to Buyer for any existing Shortfall Energy, or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Performance Security (less any amounts drawn by Buyer in accordance with this Agreement). The exercise by Buyer of its right to terminate the Agreement shall not render Buyer or Seller liable for any losses or damages incurred by the other Party whatsoever.

#### **Section 14.7 Assignment of Agreement.**

(a) Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, the Option Agreement and the Storage Option Agreement in whole or in part without the consent of Seller to a Qualified Buyer Assignee. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of Buyer under this Agreement, the Option Agreement, and the Storage Option Agreement, thereby relieving the assignor Buyer from its duties and obligations hereunder and thereunder.

(b) Except as set forth in this Section 14.7, Seller shall not assign any of its rights, or delegate any of its obligations, in or under this Agreement, the Option Agreement or the Storage Option Agreement without the prior written consent of Buyer, such consent not to be unreasonably withheld. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) Buyer's consent shall not be required in connection with the collateral assignment or pledge of this Agreement for the sole purpose of financing exclusively this Facility to any Facility Lender or the assignment of this Agreement to a Tax Equity Investor in connection with a Tax Equity Financing utilizing a lease or inverted lease structure; *provided, however*, that (1) the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement, the Option Agreement, and the Storage Option Agreement as applicable, (2) in connection with any such assignment or pledge and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement that the Facility be operated and maintained by a

Qualified Operator and (3) in the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender shall be bound by the covenants and agreements of Seller in this Agreement, the Option Agreement and the Storage Option Agreement. Seller shall provide Buyer with ninety (90) days' prior notice of any such collateral assignment or pledge. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Products (not including the proceeds thereof) to any Facility Lender.

(d) Subject to Section 14.7(e), Seller shall provide ninety (90) days' written notice to Buyer prior to the occurrence of any (i) Change in Control, (ii) any other transaction or series of transactions with respect to the sale, transfer or disposition involving any parent entity of Seller holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to control the management and policies of Seller, or (iii) any Tax Equity Financing.

(e) A Change in Control is permitted if (i) Buyer has given prior written consent to the transaction or transactions constituting the Change in Control, and (ii) concurrently with the transaction or transactions constituting the Change in Control, if there is a successor entity, such successor entity executes a written assumption agreement in favor of Buyer pursuant to which such successor entity shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents, and agree to be bound by all the terms and conditions of this Agreement and the Ancillary Documents, as applicable. In connection with any Change in Control in which Seller remains party to this Agreement and the Ancillary Documents, at Buyer's request, Seller shall deliver an estoppel certificate to Buyer confirming that this Agreement and the Ancillary Documents remain in full force and effect.

(f) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement, the Option Agreement and the Storage Option Agreement in accordance with this Section 14.7, without the prior written consent of Buyer and otherwise subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 14.25. Any purported sale or transfer in violation of this Section 14.7(f) shall be null and void and of no force or effect.

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



(h) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of the Facility Lender Consent and any other documents requested by Seller, the Facility Lender, or any Tax Equity Investor and provided by Buyer, in connection with to this Section 14.7 or any Tax Equity Financing.

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

**Section 14.9 Attorneys' Fees & Costs.** Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

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

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

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

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

**Section 14.14 Execution in Counterparts.** This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this

Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

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

**Section 14.16 Waiver; Available Remedies.** The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement expressly provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

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

**Section 14.18 Third Party Beneficiaries.** The provisions of this Agreement are solely for the benefit of the Parties. Nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein. This Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person that is not a party hereto.

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

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, Participating Members, and all of their respective commissioners, officers, agents, employees, advisors, and Authorized Representatives and assigns and successors in interest (collectively, "*Indemnitees*") and, at the option of Buyer, to defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages, demands, judgments, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to

any person, including Seller's employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, any failure of a representation, warranty or guarantee of Seller hereunder to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of the Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee.

(b) **Damage or Destruction.** If there is a casualty event or other event causing the destruction of the Facility that renders the Facility incapable of generating 50% or more of the Annual Contract Quantity, Seller shall, within four (4) months of such event, enter into a contract for the design of a replacement facility designed to be capable of satisfying the obligations of Seller under this Agreement.

(c) **Insurance.** Seller shall obtain and maintain the Insurance coverages listed in Appendix F.

(d) **Condemnation or Other Taking.** Throughout the Agreement Term, Seller shall immediately notify buyer of the institution of any proceeding for the condemnation or other taking of the Facility, the Facility Assets, or any portion thereof, including the occurrence of any hearing associated therewith. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. All awards and compensation for the taking or purchase in lieu of condemnation of the Facility, the Facility Assets or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(e) **Limitation of Liability.** EXCEPT TO THE EXTENT INCLUDED IN THE LIQUIDATED DAMAGES, INDEMNIFICATION OBLIGATIONS RELATED TO THIRD PARTY CLAIMS, OR OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY OR, IN THE CASE OF BUYER, ITS INDEMNITEES, BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER COSTS, BUSINESS INTERRUPTION DAMAGES RELATED TO OR ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER STATUTE, CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY. 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 OF SUCH DAMAGES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONTRIBUTORY, CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

(f) To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss.

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

**Section 14.21 Confidentiality.**

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 14.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

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

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

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, ruling or other Requirement of Law, including laws or regulations requiring disclosure of financial information and information material to financial matters

and filing of financial reports and responding to oral questions, discovery requests, subpoenas, civil investigations or similar processes; and

(iv) with respect to Buyer, to any of its respective members from time to time.

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("**Brown Act**"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act.

(e) Notwithstanding the foregoing or any other provision of this Agreement, any Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents, and the rights, Liens and priorities of Buyer with respect to such credit support.

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

fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity.

**Section 14.22 Mobile-Sierra.** The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term. Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties. The Parties also agree that, absent prior agreement in writing by the Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section is unenforceable or ineffective as to such Party), a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review that requires FERC to find an "unequivocal public necessity" or "extraordinary circumstances where the public will be severely harmed" to modify a contract, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 at 550-51 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Comm'n*, 558 U.S. 165 (2010).

**Section 14.23 Taxpayer Identification Number (TIN).** Seller declares that its authorized TIN is [\_\_\_\_\_]. No payment will be made under this Agreement without a valid TIN.

**Section 14.24 Service Contract.** The Parties intend that this Agreement will qualify as a "service contract" as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

#### **Section 14.25 Right of First Offer and Right of First Refusal.**

(a) Buyer has (i) a "**Right of First Offer**" (or "**ROFO**") and a "**Right of First Refusal**" (or "**ROFR**") for any proposed sale of the Facility and related assets (the "**Facility Assets**") by Seller, and (ii) a ROFO with respect to the sale of Additional Energy, all in accordance with the provisions of this Section 14.25.

(b) Prior to Seller commencing the negotiation of a sale of the Facility Assets (other than in connection with a Tax Equity Financing, in which case the provisions of this Section 14.25 shall not apply), Seller shall provide notice to Buyer of Seller's proposed transaction (a "**Proposed Sale Notice**"). Upon receipt of such Proposed Sale Notice, Buyer shall have ninety (90) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility Assets, which notice shall include Buyer's proposed purchase price for the Facility Assets (a "**Proposed Purchase Notice**"). If Buyer provides such Proposed Purchase Notice, then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility Assets to Buyer.

(c) If (i) Buyer does not provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Facility Assets from Seller, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the ninety (90) day period set forth in Section 14.25(b) and the consummation of the sale of the Facility Assets does not occur within sixty (60) days thereafter, it being understood that Buyer must obtain approvals from all relevant authorities prior to consummating the purchase of the Facility Assets, then Seller shall be free to negotiate the sale of the Facility Assets to any third party; *provided, however*, that prior to consummating any such sale, (A) Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "**Notice of Proposed Third Party Sale**") and (B) Buyer shall have the right to purchase the Facility Assets on substantially similar terms as set forth in the Notice of Proposed Third Party Sale, subject to any modifications required to conform the transaction to requirements for transactions entered into by public agencies, by providing written notice to Seller within ninety (90) days after receipt of the Notice of Proposed Third Party Sale. If Buyer does not elect to exercise its Right of First Refusal and complete its purchase within such ninety (90) days (or such longer period as is required for Buyer to obtain the appropriate approvals so long as Buyer is diligently pursuing approval from the relevant authorities), Seller shall be free to consummate the sale of the Facility Assets to the third party; *provided*, that such sale shall be on substantially similar terms and conditions presented to Buyer in the Notice of Proposed Third Party Sale. Any sale of the Facility Assets shall include the assignment and transfer of this Agreement and the Ancillary Documents to such transferee and an assumption by such transferee of all of Seller's obligations under this Agreement and the Ancillary Documents and require a written assumption agreement in favor of Buyer pursuant to which such transferee shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents and agree to be bound by all of the terms and conditions of this Agreement and the Ancillary Documents.

(d) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 14.25(b), or

(ii) consummate the sale of the Facility Assets to a third party within forty-five (45) days after the expiration of the ninety (90) day period set forth in Section 14.25(c), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO and ROFR processes hereunder) before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets.



Buyer and Seller were represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

BUYER:

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

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

Its: \_\_\_\_\_

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

Attest: \_\_\_\_\_

SELLER:

ANTELOPE DSR I, LLC

By: 

Its: Authorized Signatory

Date: 7/2/15

**APPENDIX A-1**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
  
**CONTRACT PRICE**

1. Test Energy. The Contract Price for Products associated with Test Energy is equal to \$32.25 per MWh.
2. Facility Energy. The Contract Price for the Products associated with all Facility Energy other than Test Energy and Excess Energy is \$53.75 per MWh.
3. Excess Energy. The Contract Price for Products associated with Excess Energy \$32.25 per MWh.

**APPENDIX A-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC  
CONTRACT PRICE SCHEDULE**

Size (MW <sub>AC</sub> )	COD	Annual Production (MWh/yr)	PPA Term (Years)	\$/MWh Price	Annual Escalation
230	12/31/2016	687,936	20	\$52.00	0%
200	12/31/2016	598,205	20	\$52.17	0%
175	12/31/2016	523,430	20	\$52.32	0%
150	12/31/2016	448,654	20	\$52.46	0%
125	12/31/2016	373,878	20	\$52.61	0%
100	12/31/2016	299,103	20	\$52.75	0%
75	12/31/2016	224,327	20	\$53.00	0%
50	12/31/2016	149,551	20	\$53.75	0%
40	12/31/2016	119,641	20	\$54.25	0%
30	12/31/2016	89,731	20	\$55.00	0%
20	12/31/2016	59,821	20	\$56.75	0%

**APPENDIX B-1**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
**FACILITY, PERMITS AND OPERATOR**

1. Name of Facility: Antelope DSR 1 Solar Facility  
  
Location: City of Lancaster, Los Angeles County, California
2. Owner: Antelope DSR 1, LLC
3. Operator: To be designated after Effective Date
4. Equipment:
  - (a) Type of Facility: Solar Photovoltaic
  - (b) Capacity: 50 MW
  - (c) Capacity Factor: [32.5%\*]

Total nominal gross nameplate capacity: 50 MW

Total nominal net capacity under expected average Site conditions: 50 MW
5. Expected Commercial Operation Date (from Appendix I): December 31, 2016
6. Permits:
  - (a) CEQA Determination
  - (b) Conditional Use Permit
  - (c) Building Permit
  - (d) Grading Permit
  - (e) Other permits, if any, required for the construction and operation of the Facility.

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\* The actual Capacity Factor may vary depending on weather and other meteorological conditions, final Facility design and other factors, although the Annual Contract Quantities in Appendix C and the Guaranteed Generation levels are fixed for all purposes of the Agreement.

**APPENDIX B-2**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
**MAP OF THE FACILITY**

<<Insert Map>>

**APPENDIX C**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
  
**ANNUAL CONTRACT QUANTITY**

<b>Contract Year</b>	<b>Annual Contract Quantity, MWh</b>
1	142,436
2	141,725
3	141,015
4	140,310
5	139,609
6	138,911
7	138,216
8	137,525
9	136,837
10	136,154
11	135,473
12	134,795
13	134,121
14	133,451
15	132,784
16	132,119
17	131,459
18	130,802
19	130,147
20	129,496

**APPENDIX D**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**

**FORM OF ATTESTATION**

\_\_\_\_\_(Seller)\_\_\_\_\_ **Environmental Attribute Attestation and Bill of Sale**

\_\_\_\_\_(“Seller”) hereby sells, transfers and delivers to Southern California Public Power Authority (“Buyer”) the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type:      Capacity (MW):\_\_\_\_\_      Operational Date:

As applicable: CEC Reg. no. \_\_\_\_\_      Energy Admin. ID no. \_\_\_\_\_      Q.F. ID no. \_\_\_\_\_

Dates

MWhs generated

\_\_\_\_\_ 20\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_  
\_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

in the amount of one Environmental Attribute or its equivalent for each MWh generated.

Seller further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

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/telephone: \_\_\_\_\_



**APPENDIX E**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
  
**FORM OF LETTER OF CREDIT**

**IRREVOCABLE AND UNCONDITIONAL**  
**STANDBY LETTER OF CREDIT NO. \_\_\_\_\_**

Applicant:

[\_\_\_\_\_]

Beneficiary:

Southern California Public Power Authority  
1160 Nicole Court  
Glendale, CA 91740

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Standby Letter of Credit in favor of the beneficiary by order and for the account of the applicant which is available at sight for USD \$XX,XXX,XXX by sight payment upon presentation to us at our office at [bank's address],<sup>1</sup> of: (i) your written demand for payment containing the text of Exhibit I, (ii) your signed statement containing the text of Exhibit II and, (iii) the original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings) (the "Documents"). Drawings may be presented via fax to \_\_\_\_\_. The original Letter of Credit and documents are to be sent via overnight courier to our address indicated above.

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

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<sup>1</sup> Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

*provided* that the Available Amount shall be reduced by the amount of each such drawing.

Upon presentation to us of your Documents in conformity with the foregoing, we will, on the third (3rd) succeeding Business Day after such presentation, , irrevocably and without reserve or condition except as otherwise stated herein, make payment hereunder in the amount set forth in the demand. Payment shall be made to your order in the account at the bank designated by you in the demand in immediately available funds. We agree that if, on the Expiration Date, the office specified above is not open for business by virtue of an interruption of the nature described in the Uniform Customs Article 36, this Letter of Credit will be duly honored if the specified Documents are presented by you within thirty (30) days after such office is reopened for business.

Provided that the presentation on this Letter of Credit is made on or prior to the Expiration Date and the applicable Documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except you, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely a written order issued by a court, which order specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. -

We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related Documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and Document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

This Letter of Credit shall terminate upon the earliest to occur of (i) our receipt of a notice in the form of Exhibit IV hereto signed by an authorized officer of Beneficiary, accompanied by this Letter of Credit for cancellation, (ii) our close of business at our aforesaid office on the Expiration Date, or if the Expiration Date is not a Business Day, then on the next Business Day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the Expiration Date, or any future expiration date, unless at least thirty (30) calendar days prior to the Expiration Date (or any future expiration date), we send you notice by registered mail, return receipt requested or overnight courier at your address herein stated or such other address of which you notify us in advance in writing that we elect not to consider this Letter of Credit extended for any such additional period.

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit , and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form of Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

You shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that your demand(s) for payment in conformity with the terms of this Letter of Credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of your successors by operation of law. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification and copy of document proving such successorship:

“The undersigned does hereby certify that [drawer] is the successor by operation of law to the Southern California Public Power Authority, a beneficiary named in [name of bank] Letter of Credit No. \_\_\_\_\_.”

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the “Uniform Customs and Practices for Documentary Credits,” (2007 Revision) of the International Chamber of Commerce Publication No. 600 (the “Uniform Customs”). As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of [\_\_\_\_\_] in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Exhibit I, II, III and IV hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as otherwise provided in this paragraph.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to us at the address referred to above, and shall specifically refer to this Letter of Credit no. \_\_\_\_\_.

Yours faithfully,

(name of issuing bank)

By \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT I**

**DEMAND FOR PAYMENT**

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

To Whom It May Concern:

Demand is hereby made upon you for payment to us of \$\_\_\_\_\_ by deposit to our account no. \_\_\_\_\_ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Standby Letter of Credit no. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ in the amount of \$\_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_ as the Applicant.

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT II**  
**STATEMENT**

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Standby Letter of Credit no. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ in the amount of \$ \_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_, as the Applicant.

We hereby certify to you that \$ \_\_\_\_\_ is due, owing and unpaid to us by the Applicant in that certain [DESCRIBE AGREEMENT].

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT III**  
**AMENDMENT**

Re: Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

Beneficiary:

Applicant:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Standby Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (strike two) the stated amount by \$ \_\_\_\_\_ to a new stated amount of \$ \_\_\_\_\_ or by extending the Expiration Date to \_\_\_\_\_ from \_\_\_\_\_. All other terms and conditions of the Letter of Credit remain unchanged.

An amendment is effective only when accepted by the Southern California Public Power Authority, below.

Dated: \_\_\_\_\_

Yours faithfully,

(name of issuing bank)

By \_\_\_\_\_  
Title \_\_\_\_\_

**ACCEPTED**

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**EXHIBIT IV**

**SURRENDER**

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

[Insert Bank Address]

Notice of Surrender of Letter of Credit

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

Attention: Letter of Credit Department

Ladies and Gentlemen:

We refer to your above-mentioned Irrevocable and Unconditional Standby Letter of Credit (the "Letter of Credit"). The undersigned, an authorized signer of the Southern California Public Power Authority, hereby surrenders this Letter of Credit to you for cancellation as of the date set forth above. No payment is demanded of you under this Letter of Credit in connection with this surrender.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

**APPENDIX F  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC  
INSURANCE**

**I. GENERAL REQUIREMENTS**

Within ten (10) days after the Effective Date, Seller shall furnish Buyer evidence of commercial automobile liability, commercial general liability, excess liability, and workers' compensation coverage meeting the requirements set forth in this Appendix F from insurers acceptable to Buyer and in a form acceptable to the risk management section of the project manager for Buyer or acceptable to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense. Prior to the date on which each of Builders' Risk, Property All Risk and Professional Liability insurance is required to be obtained, Seller shall furnish Buyer evidence of coverage meeting the requirements of this Appendix F.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Executive Director, Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.



## **II. SPECIFIC COVERAGES REQUIRED**

### **A. Commercial Automobile Liability**

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned (if applicable), non-owned, and hired vehicles for performance of the work by Seller or its officers, agents, or employees, as required, to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its members, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement by Seller or its officers, agents, or employees. The evidence of insurance shall be a form acceptable to Buyer's risk management agent.

### **B. Commercial General Liability**

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire, Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be a form acceptable to Buyer's risk management agent, and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations of Seller and its officers, agents, or employees under this Agreement.
2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. A description of the coverages included under the policy.

### **C. Excess Liability**

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies on an endorsement to the policy

acceptable to Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

**D. Workers' Compensation/Employer's Liability Insurance**

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be a form of Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

**E. Builders' Risk**

Prior to commencing Site construction activities, Seller, or Seller's EPC Contractor, shall provide Builder's Risk insurance, which shall be of the "all risk" type, shall be written in completed value form, and shall protect Seller, the Southern California Public Power Authority, the Board of Directors, and Buyer's members against risks of damage to buildings, structures, and materials and equipment whether on site or in transit from any location worldwide. Outside of the United States, this transit insurance requirement may be satisfied by the purchase of a global marine specific policy, if applicable. The amount of such insurance shall be not less than the insurable value of the work at completion. Buyer shall be a named additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to Seller and the aforementioned additional insured, as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Seller and the aforementioned named additional insured. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, commissioning, and, to the extent available in the insurance market on generally commercially reasonable terms, earthquake and flood, provided, that should Seller determine that either earthquake or flood coverage is not available on generally commercially reasonable terms as aforesaid, Seller shall notify Buyer not less than thirty (30) days in advance of the date when such coverage will not, or will no longer, be available together with a description of Seller's efforts to obtain such coverage and an explanation of the basis for Seller's determination in reasonable detail. The policy shall be in full force and effect until the earlier of: (1) the Commercial Operation Date or the substantial completion of the Facility, whichever date is the later, or (2) the effective date of the Property All Risk Insurance referenced below.

**F. Property All Risk Insurance**

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, or faulty design. This policy shall be obtained and placed in full force and effect prior to the expiration of the Builder's Risk Policy. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builders' Risk Policy in Paragraph II.E.

**G. Professional Liability**

Prior to the commencement of work by Seller's EPC Contractor under Seller's engineering, procurement and construction contract for the Facility, and subject to the following paragraph, Seller shall provide (or cause its EPC Contractor to provide) Professional Liability insurance with contractual liability coverage included covering Seller's (or such EPC Contractor's, as applicable) liability arising from errors and omissions made directly or indirectly during the execution of this Agreement (or the engineering, procurement and construction contract, as applicable) and shall provide coverage for the total limits actually arranged by Seller, but not less than \$1,000,000.00, combined single limit. Such policy shall be maintained for not less than three (3) years after the Commercial Operation Date under this Agreement. Evidence of such insurance shall be in the form of a special endorsement of insurance and shall include a Waiver of Subrogation in favor of Buyer, its officers, agents and employees.

The Parties agree to confer in good faith prior to the hiring of Seller's EPC Contractor (i) to determine whether the preceding requirement for Professional Liability insurance is reasonably necessary to be included in this Agreement to protect Buyer or the Buyer's Members consistent with Prudent Utility Practices and (ii) to modify (or eliminate) such requirement as mutually agreed to be appropriate based on the foregoing standard in clause (i).

**APPENDIX G**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
  
**QUALITY ASSURANCE PROGRAM**

Seller shall implement a Quality Assurance (“Q/A”) Program to ensure that the performance of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that the Facility will comply with the Requirements and the manufacturers’ or suppliers’ requirements for successful operation of the Facility.

**Quality at Seller**

Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than “low” quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

“Quality assurance” refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term “quality control” to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller’s Q/A Program. In addition, quality maintenance which meets or exceeds manufacturers’ or suppliers’ requirements and best industry practices must be an integral part of Seller’s Q/A Program.

**The Quality Management Process**

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term “quality” most accurately refers to a project’s ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller’s project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller’s project management team targets the following areas to monitor quality:

- 1) A written Q/A Manual.
- 2) Independent engineering review of the entire project process, from design review through Commercial Operation.
- 3) A written maintenance manual for the Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

### **Q/A Manual**

The idea of a Q/A manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and lastly the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. Furthermore, it shall provide the plan and strategy for quality control and review during the construction period. The Q/A Manual shall strive, at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties as necessary.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the construction of the Facility.

- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

### **Conceptual Design Review**

Seller has a team of professionals who develop and review conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed in order to assess the solar resource, project constructability, site access, cultural and biological impact, land use restrictions, and landowner requirements. At this stage, the site plan is reviewed, modified as necessary, and used to begin the permitting and public review process. The site plan may be further modified based on comments received during the permitting and public review process. Subsequent to this phase, final third party engineering will commence.

### **Final Engineering Design**

Third party engineering firms, licensed to practice in the state in which the project is to be constructed, will commence the detailed design necessary for the permitting and construction of the Facility. Each firm will have its own quality assurance and quality control procedures, however, Seller and a third party independent engineer will review the final work products to ensure conformance with this Agreement. When Seller and third party independent engineer have completed a multiple phase review process, and all comments have been addressed, the design is considered final and ready for construction permitting.

During the final engineering design process, geotechnical studies will be finalized as needed. If existing subsurface conditions are different from anticipated, the design may be modified to account for any variances. Any changes of this nature will be documented in as-built design drawings and approved in advance by Seller.

### **Quality Assurance at the Construction Site**

Seller will hire a third party general contractor to construct the project. The contractor will be required to have a quality assurance program implemented by its own staff, and utilizing third party inspectors as necessary. The primary areas of focus are assuring conformance of construction to design drawings, conformance of materials to specifications, and to ensure prudent industry standards and best practices are being utilized. The contractor will be required to provide third party inspection and testing as necessary. The contractor will also be required to maintain a set of drawings during the course of construction, which will be used to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller's construction management team prior to implementation.

The contractor will provide the required oversight and training of its installation crew to ensure the construction of the Facility meets its quality guidelines. As necessary, equipment suppliers will have technical advisors on site to inspect, advise, and sign off on installation means and methods. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents and Q/A procedures. The contractor and appropriate equipment suppliers will commission the Facility per prudent industry standards, equipment specifications, and utility requirements. Prior to construction completion, a punchlist will be developed by the contractor, Seller, Seller's representatives, and third party independent engineer. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of all punchlist items. Lastly, the independent engineer will perform periodic audits during construction to oversee critical items, confirm construction progress, and provide independent reporting and assessments to the project stakeholders.

Following completion of the project, the contractor will be required to provide to Seller as-built design drawings, record of all testing documentation, and final permit approvals. This documentation will be maintained at the project site during operations of the Facility.

#### **Quality Assurance During Commercial Operations**

Seller shall supply a Quality Assurance Plan for Buyer's review and approval no less than sixty (60) days prior to the anticipated Commercial Operation Date. Upon receipt of Quality Assurance Plan, Buyer shall provide written approval, such approval not to be unreasonably withheld, or comment within ten (10) Business Days.

**APPENDIX H  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC  
QUALIFIED OPERATORS**

Sustainable Power Group LLC  
FTP Power LLC  
Signal Energy, LLC  
First Solar Electric (California) Inc.  
NRG Energy, Inc.  
SunPower Corporation  
Zachry Holdings, Inc.  
Swinerton Builders, Inc.  
AMEC Kamtech Inc.  
Iberdrola Renewables, LLC  
EDF Renewable Services, Inc.  
Fluor Facility and Plant Services, Inc.  
SunEdison, Inc.



**APPENDIX I**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
**MILESTONE SCHEDULE**

<b>No.</b>	<b><u>Guaranteed Date</u></b>	<b><u>Milestone Description</u></b>	<b><u>Daily Liquidated Damages</u></b>
1.	Ten (10) days after the Effective Date	Seller has delivered all certificates and other documents required to establish that Commercial Automobile Liability, Commercial General Liability, Excess Liability and Workers' Compensation/Employer's Liability Insurance meeting the requirements of the Agreement and <u>Appendix F</u> is in full force and effect	
2.	Thirty (30) days after the Effective Date	Seller has delivered the Development Security	
3.	June 29, 2015	Seller has delivered to Buyer a CEC pre-certification form duly approved by the CEC.	
4.	September 30, 2015	Seller has achieved the Environmental Compliance Milestone	\$5,000 per day
5.	March 31, 2016	Seller has executed and delivered copies of the Site Control Documents and has obtained Site Control	\$5,000 per day
6.	March 31, 2016	Seller has entered into a Subcontract for the engineering, procurement, and construction of the Facility that satisfies the	

<b>No.</b>	<b><u>Guaranteed Date</u></b>	<b><u>Milestone Description</u></b>	<b><u>Daily Liquidated Damages</u></b>
		requirements set forth in the Agreement and has delivered a copy of such Subcontract to Buyer (with confidential or proprietary information redacted at Seller's discretion).	
7.	March 31, 2016	Seller has executed construction financing documents for the financing of the construction of the Facility.	
8.	June 1, 2016	Seller has obtained all Permits set forth on <u>Appendix B-1</u> (which shall be final and non-appealable), excluding all Permits not yet required for Seller's operation of the Facility but that are reasonably expected to be obtained in due course.	\$5,000 per day
9.	June 15, 2016	Seller has achieved the Construction Start Date.	\$5,000 per day
10.	December 15, 2016	Seller has achieved initial synchronization of the Facility.	
11.	December 31, 2016	Commercial Operation Date	\$10,000 per day

**APPENDIX J  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC**

**AUTHORIZED REPRESENTATIVES;  
BUYER AND SELLER BILLING, NOTIFICATION AND  
SCHEDULING CONTACT INFORMATION**

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

- 1.1 Buyer:

Executive Director  
Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: bcarnahan@scppa.org

- 1.2 Seller:

Antelope DSR 1, LLC  
Attention: Operations & Maintenance  
Telephone: 435-421-9022  
Facsimile: 801-679-3501  
Email: radams@spower.com

2. **Billings.** Billings and payments pursuant to Article XI and Appendix A shall be transmitted to the following addresses:

- 2.1 If Billing to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Payable  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: voates@scppa.org

2.2 If Payment to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Payable  
Telephone: (626) 793-9364  
Facsimile: (626) 704-9461  
Email: voates@scppa.org

2.3 If Payment or Billing to Seller:

Antelope DSR 1, LLC  
Controller  
Attention: Accounts Receivables  
Telephone: 801-679-3512  
Facsimile: 801-679-3501  
Email: rliddell@sPower.com

3. **Notices.** Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

Antelope DSR 1, LLC  
Attention: General Counsel's Office  
Telephone: 801-679-3512  
Facsimile: 801-679-3501  
Email: smcbride@spower.com

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

Antelope DSR 1, LLC  
Attention: Operations & Maintenance  
Telephone: 435-421-9022  
Facsimile: 801-679-3501  
Email: radams@spower.com

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 7.5 shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

ANTELOPE DSR 1, LLC  
Attention: Operations & Maintenance  
Telephone: 435-421-9022  
Facsimile: 801-679-3501  
Email: radams@spower.com

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Email: shomer@scppa.org, knguyen@scppa.org, and bcarnahan@scppa.org

If to Seller:

Antelope DSR 1, LLC  
Attention: Operations & Maintenance  
Telephone: 435-421-9022  
Facsimile: 801-679-3501  
Email: radams@spower.com

**APPENDIX K  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC**

**FORM OF OPTION AGREEMENT**

This Purchase Option Agreement (this “**Agreement**”) is made as of \_\_\_\_\_, 2015 (the “**Effective Date**”), by and between Antelope DSR 1, LLC, a Delaware limited liability company (“**Developer**”), and the Southern California Public Power Authority (“**SCPPA**”), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (the “**Act**”), and that certain Southern California Public Power Authority Joint Powers Agreement entered into pursuant to the provisions of the Act among SCPPA and SCPPA’s members, dated as of November 1, 1980. Developer and SCPPA are sometimes hereinafter individually or collectively called a “**Party**” or the “**Parties**”.

WHEREAS, Developer and SCPPA are party to that certain Power Purchase Agreement, dated as of [\_\_\_\_\_] (the “**PPA**”). Terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Developer is developing the Facility, a solar photovoltaic power generating facility to be located at the Site, and SCPPA will purchase the energy, capacity rights and environmental attributes from the Facility.

WHEREAS, Developer has agreed to offer SCPPA the option to purchase the Facility on the terms provided herein, and SCPPA has agreed to accept such option to purchase.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, SCPPA entering into the PPA, the covenants and agreements herein contained, and other good and valuable consideration, (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, hereto agree as follows:

**1. OPTION TO PURCHASE FACILITY.**

1.1 **Grant of Purchase Option.** Developer hereby gives and grants SCPPA an irrevocable right and option, to be exercised in its sole discretion, to purchase all of the Developer’s right, title, and interest in and to the Facility on the terms set forth herein (the “**Purchase Option**”) (the occurrence of the transfer of the Facility, the “**Closing**”). So long as no Default by SCPPA has occurred and is continuing under the PPA, SCPPA may exercise the Purchase Option, with the transfer of the Facility to occur on or about either the tenth (10th), fifteenth (15th) or twentieth (20th) anniversary of the Commercial Operation Date (each, a “**Purchase Option Date**”). Developer acknowledges that

SCPPA has no obligation to exercise the Purchase Option and that SCPPA may decline to exercise the Purchase Option for any or no reason, as SCPPA deems appropriate in its sole discretion.

## 1.2 Determination of Purchase Price.

(a) *Fair Market Value.* SCPPA may, on or at any time within two hundred ten (210) days before each Purchase Option Date (the “**Purchase Price Notice Date**”), request a determination of the purchase price under the Purchase Option (the “**Purchase Price**”). The Purchase Price shall be the fair market value of the Facility determined in accordance with this Section 1.2; provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit A. The fair market value of the Facility shall be the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm’s-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date (as defined below), taking into account all relevant facts and circumstances relating to the Facility, and assuming (a) delivery of the expected generation for the then-remaining term of the PPA at the Contract Price, and (b) that the Facility is able to generate revenue for the remaining useful life of the Facility at a price per MWh equal to the then fair market price for Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility, as may adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding, or other material adverse event affecting all or any portion of the Facility prior to and as of the Closing Date. If SCPPA disagrees with Developer’s determination of the fair market value, the Parties may meet and attempt to agree on a fair market value.

(b) *Independent Appraiser.* If the Parties are unable to agree on the fair market value, the Parties shall jointly retain an independent appraiser to determine such fair market value (the “**Independent Appraiser**”), SCPPA shall be responsible for the costs of the Independent Appraiser. The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. The Independent Appraiser shall be reasonably acceptable to both Parties. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or their respective Affiliates. The Independent Appraiser shall make a determination of the Purchase Price within thirty (30) days after appointment (the “**Price Determination**”). Upon making the Price Determination, the Independent Appraiser shall provide a written notice thereof to both Developer and SCPPA, along with all supporting documentation detailing the method of calculation of the Purchase Price. Except in the event of fraud or manifest error, the Price Determination shall be a final and binding determination of the fair market value of the Facility.

(c) *Additional Appraisers.* If the Parties are unable to agree upon an Independent Appraiser within thirty (30) days after SCPPA submits a request for a determination of the Purchase Price under this Section 1.2, then each of Developer and SCPPA shall select and retain an independent appraiser meeting the requirements for an independent appraiser set forth in this Section 1.2. Each Party shall cause its appraiser to make a determination of the Purchase Price within thirty (30) days. Upon completion of the two appraisals, SCPPA and Developer shall deliver the results to each other. If the purchase price determinations of the two independent appraisers vary by less than ten percent



(10%), the Price Determination shall be the simple average of the price determinations of the two appraisals. If the variance is greater than ten percent (10%), the two independent appraisers shall select a third independent appraiser meeting the requirements for an independent appraiser set forth in this Section 1.2, or if the first two appraisers fail to agree upon a third appraiser within fifteen (15) days, a third independent appraiser shall be appointed by the American Arbitration Association (“AAA”) upon application of either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third appraiser shall select one of the appraisals generated by the first two appraisers within thirty (30) days of his retention and such resulting price shall be the Price Determination. If the third appraiser selects the appraisal originally generated by SCPPA’s appraiser, Developer shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally prepared by Developer, SCPPA shall pay the fees of the third appraiser.

(d) *Exercise of Purchase Option.* If SCPPA wishes to exercise the Purchase Option following the Price Determination, it shall deliver an exercise notice (the “**Exercise Notice**”) to Developer within one hundred eighty (180) days after receipt of the Price Determination (the “**Exercise Period**”). Any such exercise notice shall be irrevocable once delivered, subject to SCPPA’s rights to not Close under Section 4. If SCPPA does not exercise the Purchase Option during the Exercise Period, then the Price Determination shall be null and void, and SCPPA may not request a new determination of the Purchase Price until the next Purchase Option Date.

1.3 Terms and Date of Facility Purchase. The Parties shall consummate the sale of the Facility to SCPPA no later than ninety (90) days following SCPPA’s delivery of an Exercise Notice. On the effective date of such sale (the “**Closing Date**”), (a) Developer shall surrender and transfer to SCPPA all of Developer’s right, title, and interest in and to all assets, properties, rights and interests of every kind, nature and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), operated, owned or leased by, or allocated to, Developer for or in connection with the Facility and its intended purpose, operation, and function (other than any assets that SCPPA and Developer have mutually agreed to exclude from the transfer and sale, collectively, the “**Excluded Assets**”) and shall retain all liabilities, and profits (including any Environmental Attributes), arising from or relating to the Facility prior to and as of the Closing Date in accordance with Section 1.4; (b) SCPPA shall pay the Purchase Price to Developer in readily available funds, and shall assume all liabilities arising from or relating to the Facility after the Closing Date in accordance with Section 1.4; (c) SCPPA shall pay all amounts incurred by SCPPA due to Developer under the PPA as of the Closing Date net of any amounts owed by Developer to SCPPA thereunder; (d) both Developer and SCPPA shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Facility in SCPPA, and (ii) deliver such ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the Facility to SCPPA; and (e) the PPA shall automatically terminate. The purchase and sale of the Facility shall be on an “as-is, where-is” basis, except that Developer shall make representations and warranties regarding title, authority, and liens and shall, prior to the Closing Date, provide disclosures with specificity and in good faith, to the knowledge of Developer, regarding any actions, suits, arbitrations, procedures, and/or claims pending or threatened against Developer or the Facility, which if adversely determined, could adversely affect the Facility or result in a material liability to SCPPA. Developer shall, to the extent reasonably possible, transfer or assign to SCPPA all manufacturer and third-party warranties with respect to the

Facility or any part thereof. SCPPA shall pay all transaction and closing costs associated with exercise of the Purchase Option.

**1.4 Allocation of Liabilities.** At the Closing, SCPPA shall assume and agree to pay for, perform, fulfill and discharge after the Closing, the liabilities and obligations relating to the Facility that are first required to be performed after the Closing or arising or occurring after the Closing, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”). The Assumed Liabilities shall include all liabilities and obligations under contracts which are assumed by SCPPA at the Closing arising before the Closing Date and becoming due after Closing Date; provided that the Assumed Liabilities shall not include any liabilities arising out of a breach or default thereof by Developer prior to the Closing Date. SCPPA shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to SCPPA by Developer or otherwise be known to SCPPA), any liabilities or obligations of any nature, fixed or contingent or known or unknown related to the Facility other than as specifically set forth in this Section 1.4 (with all such unassumed obligations referred to in this Agreement as the “**Excluded Liabilities**”). Without limiting the generality of the preceding sentence, SCPPA shall have no liability with respect to any of the following liabilities or obligations (whether asserted before or after the Closing and regardless whether the same or the basis therefor may have been disclosed to SCPPA by Developer or otherwise be known to SCPPA), all of which are included in the Excluded Liabilities:

(a) Any liability or obligation of Developer in respect of taxes attributable to the Facility for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity at the Facility conducted on or before the Closing that arises after the Closing;

(b) Any liability or obligation of Developer relating to the Facility, including arising out of Developer’s ownership and operation of the Facility, arising or occurring on or prior to the Closing;

(c) Any liability or obligation of Developer with respect to the employment or termination of any employee or group of employees by Developer, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Developer is a party or by which Developer is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise;

(d) Any liability or obligation of Developer for pension fund payments or unfunded pension fund liabilities;

(e) Any liability or obligation arising from or associated with any of the Excluded Assets;

(f) Any liability or obligation of Developer or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property, whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Developer or its Affiliates arising on or prior to the Closing; and

(g) Any liability or obligation of Developer or its Affiliates arising solely in connection with the Facility secured by a Lien of a Facility Lender, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, or benefit monetization, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, and specifically excluding any obligations associated with any equity investment or Tax Equity Financing provided to Developer, or any Affiliate of Developer, to support the development, construction and operation of the Facility (“**Facility Debt**”), or Liens or encumbrances other than those permitted in writing by SCPPA at the Closing.

2. **ACCESS AND DUE DILIGENCE.** Between the Purchase Price Notice Date and the Closing Date (such period, the “Applicable Diligence Period”), upon reasonable advance notice, Developer will (a) afford SCPPA and its representatives (and the Independent Appraiser) full and complete access during normal business hours to the Facility and to Developer’s personnel, any and all contracts, permits, books and records, properties, design schematics, blueprints or other similar documents, and any other documents and data (provided that SCPPA shall observe, and shall cause its representatives to observe, all of Developer’s security protocols), (b) furnish SCPPA and SCPPA’s representatives (and the Independent Appraiser) with copies of all such documents and data as SCPPA or the Independent Appraiser may reasonably request, and (c) furnish SCPPA and its representatives (and the Independent Appraiser) with such additional financial, operating, and other data and information in Developer’s possession or to which Developer has access as SCPPA and its representatives (and the Independent Appraiser) may reasonably request. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty four (24) hours), Developer shall afford SCPPA and its representatives (and the Independent Appraiser), with reasonable access to the Facility for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise, including to conduct a phase 1 environmental site assessment, in such manner so as not to materially disturb or interfere with the normal operations of the Facility.

3. **OPERATION OF THE FACILITY; CONDUCT OF BUSINESS.** During the Applicable Diligence Period, Developer will conduct its business with respect to the Facility in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices. During the Applicable Diligence Period, Developer shall not (a) sell or otherwise dispose of or encumber any of the Facility assets or any other property or assets which are primarily related to the operation, maintenance and use of the Facility (other than sales, leases, transfers or dispositions in the ordinary course of business consistent with past practice and Prudent Utility Practices), or (b) except as may be required by their terms, and except in the ordinary course of business consistent with past practice, modify, subordinate, amend, terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation, severance or surrender of any contract, permit or warranty, without the prior written approval of SCPPA.

4. **NOTIFICATION.** During the Applicable Diligence Period, Developer shall give prompt notice (each notice, a “Change Notice”) to SCPPA of the occurrence or non-occurrence of any event, change, effect or development of any kind which could be reasonably expected to result in a: (a) material adverse effect, or (b) breach of any of Developer’s covenants under this Agreement. If elected by SCPPA, the Purchase Price may be adjusted by an amount (as determined by the Parties in good faith, or absent their mutual agreement, by an Independent Appraiser using the same methodology as set forth in Section 1.2) to take into account each event described in a Change Notice. SCPPA shall have the right, but not the obligation, to either (i) terminate the Purchase Option with

respect to the applicable Purchase Option Date and elect not to purchase the Facility; provided, however, that such termination shall not affect SCPPA's right to exercise a Purchase Option with respect to a future date, or (ii) proceed with the Closing despite the existence of the Change Notice and pay the Purchase Price, as such Purchase Price may be adjusted pursuant to this Section 4, subject to the minimum purchase price in Exhibit A.

## **5. MISCELLANEOUS.**

### **5.1 Representations and Warranties of SCPPA.**

(a) SCPPA is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by SCPPA of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such SCPPA's regulatory or governing bodies, other than that which has been obtained; provided that further authorizations from such Buyer's regulatory or governing bodies will be required for SCPPA to exercise the Option; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of SCPPA enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

### **5.2 Representations and Warranties of Developer.**

(a) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and (in the case of Developer) to enter into this Agreement, and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) Developer has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement, and Developer has delivered to Developer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Developer as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Developer certifying as to the names and signatures of the authorized representatives of Developer.

(c) The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

5.3 Survival. The rights of SCPPA under this Agreement and the Purchase Option shall be prior and superior to the rights of any Facility Lender and prior to and superior to the rights of any other person or entity that subsequently acquires an interest in the Facility. Any person or entity acquiring the Facility or any interest therein of any nature (including, without limitation, via foreclosure or deed-in-lieu of foreclosure by any Facility Lender) shall take the Facility subject to the rights of SCPPA to acquire the Facility.

5.4 Waiver of Consequential Damages. THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS AGREEMENT.

5.5 Assignment. SCPPA may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, in whole or in part without the consent of Developer to a Qualified Buyer Assignee that is also the assignee of the PPA. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Developer pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of SCPPA under this Agreement, thereby relieving the assignor SCPPA from its duties and obligations hereunder. Except as set forth in this Section 5.5, neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

5.6 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by SCPPA and Developer.

5.7 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. The parties hereto agree that venue for any action brought to enforce the terms of this Agreement shall be in the applicable courts of the County of Riverside and the Parties hereby submit to the jurisdiction of such courts.

5.8 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

5.9 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements for such instruments or communications set forth in the PPA.

5.10 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Purchase Option and this Agreement shall automatically terminate and be of no further force or effect.

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

5.12 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

5.13 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

5.14 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party. Upon SCPPA's request and without further consideration, Developer or its Affiliates, as applicable, shall promptly do, execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation as are reasonably required, and take all such other action as SCPPA may reasonably request in order to more effectively (a) transfer, convey and assign the Facility Assets to SCPPA in accordance with the provisions set forth in this Agreement, (b) to the full extent permitted by applicable Requirements of Law, put SCPPA in actual possession of and confirm SCPPA's title to, all of Developer's right, title and interest in and to any assets related to the Facility, and (c) include within the Facility Assets, and transfer, convey and assign to Developer, free and clear of all Liens other than Liens expressly permitted by SCPPA in writing at the closing of the sale of the Facility Assets, any assets necessary for the ownership, operation and maintenance of the Facility that are held or owned by Developer or an Affiliate of Developer on or before the closing.

5.15 Relationship with PPA; Right of First Offer and Right of First Refusal. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment or modification of the PPA. In the event of a conflict between this Agreement and the PPA, this Agreement shall control. Notwithstanding the foregoing, this Agreement shall not be deemed to limit Buyer's Right of First Offer or Right of First Refusal set forth in the PPA.

5.16 **Equitable Remedies.** The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Seller and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Option Agreement as of the Effective Date.

ANTELOPE DSR 1, LLC

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

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

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



**Exhibit A**

**Minimum Purchase Price**

<b><u>Purchase Option Date</u></b>	<b><u>Minimum Purchase Price</u></b>
10 years	\$82,390,142
15 years	\$78,367,065
20 years	\$66,995,000

**APPENDIX L-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification ("***Certification***") of the Construction Start Date is delivered by Antelope DSR 1, LLC ("***Seller***") to Southern California Public Power Authority ("***Buyer***") in accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_ ("***Agreement***") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the engineering, procurement and construction contract related to the Facility was executed on \_\_\_\_\_;
2. the notice provided by Seller to EPC Contractor by which Seller authorizes the EPC Contractor to begin construction of the Facility without any delay or waiting periods was issued on \_\_\_\_\_ (attached); and
3. the Construction Start Date has occurred.

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

**ANTELOPE DSR 1, LLC**

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

Its: \_\_\_\_\_

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

**APPENDIX L-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("***Certification***") of the Commercial Operation is delivered by [independent engineer] ("***Engineer***") to Southern California Public Power Authority ("***Buyer***") in accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_ ("***Agreement***") by and between ANTELOPE DSR 1, LLC 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.

4. Equipment sufficient to generate one hundred percent (100%) of the Contract Capacity of the Facility has been erected in accordance with the equipment manufacturer's specifications ("***Initial Mechanical Completion***");
5. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
6. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Facility Energy;
7. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
8. The Facility is operational and interconnected with the CAISO grid and released by the CAISO for Commercial Operation and capable of delivering Facility Energy through the permanent interconnection facilities for the Facility.

For purposes of Section 4 above, "***Initial Commissioning Completion***" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer's specifications.

EXECUTED by [INDEPENDENT ENGINEER]  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[INDEPENDENT ENGINEER]

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

Its: \_\_\_\_\_

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

**APPENDIX M-1  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC  
[RESERVED]**

**APPENDIX M-2  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC  
[RESERVED]**

**APPENDIX N  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC**

**SITE CONTROL DOCUMENTS**

On or prior to December 31, 2015, Seller may update this Appendix N by Notice to Buyer, to add or remove Site Control Documents for the parcels shown on the following map, provided that such parcels are under control by Seller and have a conditional use permit for the construction and operation of a solar facility.

**Site Control Documents:**

- 1.
- 2.
- 3.

[See Attached Map]

**APPENDIX O**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF JULY 16, 2015**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**ANTELOPE DSR 1, LLC**  
  
**STORAGE OPTION AGREEMENT**

This Storage Option Agreement (this “**Agreement**”) is made as of \_\_\_\_\_, 2015 (the “**Effective Date**”), by and between Antelope DSR 1, LLC, a Delaware limited liability company (“**Developer**”), and the Southern California Public Power Authority (“**SCPPA**”), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (the “**Act**”), and that certain Southern California Public Power Authority Joint Powers Agreement entered into pursuant to the provisions of the Act among SCPPA and SCPPA’s members, dated as of November 1, 1980. Developer and SCPPA are sometimes hereinafter individually or collectively called a “**Party**” or the “**Parties**”.

WHEREAS, Developer and SCPPA are party to that certain Power Purchase Agreement, dated as of JULY 16, 2015 (the “**PPA**”). Terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Developer is developing the Facility, a solar energy generating facility to be located at the Site.

WHEREAS, in conjunction with the Facility, SCPPA may wish to place an energy storage facility (the “**Storage Project**”) at the Site, on the terms and conditions set forth in this Agreement.

WHEREAS, Developer has agreed to grant SCPPA an option to lease certain land and to provide certain assistance and accommodation for the placement of the Storage Project at the Site.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, SCPPA entering into the PPA, the covenants and agreements herein contained, and other good and valuable consideration, (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, hereto agree as follows:

1. Option.

1.1 Grant of Option. Developer hereby grants to SCPPA an option (the “**Option**”) to lease (a) a portion of the Site (the “**Option Property**”), (b) rights to excess interconnection capacity in the amount of up to twelve (12) MW, or such other amount mutually agreed to by the Parties, under the Generator Interconnection Agreement (the “**Excess Interconnection Capacity**”), and (c) rights under the relevant Permits for the purpose of installing, owning, operating, and maintaining the Storage Project (such rights, the “**Storage Project Rights**”). The Option Property shall be selected and identified by Developer and SCPPA jointly, taking into consideration the design of the Storage Project, provided that the Option Property shall not exceed 2,000 square feet per MW of the Storage Capacity, unless otherwise agreed to by the Parties.

1.2 Option Period. The option period shall run from the Commercial Operation Date and shall continue through the fifteenth (15th) anniversary thereof (the “**Option Period**”).

1.3 Exercise of Option. SCPPA may exercise the Option at any time during the Option Period by delivering to Developer written notice of exercise of the Option (“**Notice of Exercise**”). The Option may be exercised once or twice, at SCPPA’s election, provided that if the Option is exercised twice, the combined Storage Project resulting from both exercises shall be subject to all requirements of this Agreement. Upon delivery by SCPPA of a Notice of Exercise, SCPPA and Developer shall promptly negotiate and execute a lease and storage implementation agreement (each such agreement, a “**Lease**”) and such other agreements, as appropriate, to afford SCPPA the Storage Project Rights. Each Lease shall contain terms and conditions consistent with the terms set forth in Section 1.5 of this Agreement, other customary terms and conditions, and such other terms and conditions as the Parties may mutually agree. If the Option is exercised twice, the second Lease shall be in a form substantially identical to the first Lease. Upon execution of a second Lease, this Agreement shall terminate.

1.4 Arbitration/Remedies. If the Parties have failed to agree upon the terms and conditions of a Lease within ninety (90) days after Developer’s receipt of a Notice of Exercise, then SCPPA shall have the right to initiate arbitration proceedings with respect thereto in accordance with this Section 1.4. Any such arbitration proceedings shall be conducted in Riverside, California before a single arbitrator under the auspices and then-current Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall have substantial professional experience in electric power purchase and sale transactions, with experience in energy storage projects. Within twenty (20) days following selection of the arbitrator, each Party shall submit to the arbitrator a proposed form of Lease. Thereafter, the arbitrator may conduct such hearings, allow such discovery and make such inquiries as the arbitrator deems appropriate, provided that the arbitrator shall be directed (i) to select one of the submitted forms of Lease as most consistent with this Agreement, without compromise (aka “baseball” arbitration), as his award, and (ii) to deliver his award within sixty (60) days following his retention. SCPPA and the Developer shall give full access to the arbitrator. The Parties shall execute and deliver the Lease selected by the arbitrator within ten (10) days following his award and, if either Party fails to do so, the aggrieved Party may seek specific performance of the award from the court pursuant to Sections 14.12 and 14.13 of the PPA. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator’s award thereon shall be maintained in confidence by the



Parties. If the arbitrator selects the Lease submitted by SCPPA, Developer shall pay the fees and costs of the arbitrator. If the arbitrator selects the Lease submitted by Developer, SCPPA shall pay the fees and costs of the arbitrator. Except for the foregoing, each Party shall pay its own legal fees and other costs of the arbitration.

1.5 Lease Terms.

(a) Annual rent of \$1 for the Storage Project Rights and any and all necessary and desirable equipment reserved for or to accommodate the Storage Project, including the excess capacity of the inverters.

(b) SCPPA will be responsible for the engineering, procurement and construction of the Storage Project and operating and maintenance costs of the Storage Project. SCPPA will install additional protective devices at Developer's reasonable request to isolate the Storage Project from the Facility inverters in the event of a fault or other event. Developer shall assist with SCPPA's efforts as set forth in Section 3.3.

(c) SCPPA may elect to engage Developer to operate and maintain the Storage Project. If Developer agrees to be so engaged, operation and maintenance shall be in accordance with Prudent Utility Practices and in compliance with any equipment warranty requirements or recommendations of the equipment manufacturers and/or vendor.

(d) SCPPA shall be entitled to utilize the inverter to flow electricity from the Storage Project on to the grid when the inverter has available capacity.

(e) SCPPA shall be entitled to redirect some of the Energy generated by the Facility into the Storage Project and draw from the Storage Project as it needs, provided that such operations do not conflict with the terms of the Facility's interconnection agreement.

(f) SCPPA shall pay Developer at the Contract Price for Energy the Facility would have otherwise generated and delivered to the Point of Delivery during a redirection of Energy into the Storage Project, but shall not be required to pay Developer for the Storage Project charge/discharge cycle.

(g) The Parties shall agree upon detailed operating procedures for the operation of the Storage Project, including metering protocols and procedures to appropriately measure the Energy output of the Facility into the inverters and to the grid and Energy output of the Facility into the Storage Project.

(h) The Lease shall contain such other terms and conditions as necessary to reflect the financing and ownership structure for the Storage Project.

(i) The Lease shall automatically terminate upon the termination or expiration of the PPA for any reason.

1.6 Failure to Exercise Option. If the Option has not been exercised as of 5:00 p.m. Pacific time on the last day of the Option Period, then the Option shall automatically expire and this Agreement automatically terminate, without further action by any Party, and the rights

granted to SCPPA hereunder shall be of no further force or effect. In the event the last day of the Option Period falls on a Saturday, Sunday or holiday, the Option Period shall be extended to the next business day.

2. Access to Option Property. During the Option Period, Developer shall provide SCPPA and its employees, agents, consultants and contractors (“SCPPA Personnel”) with reasonable access to the Option Property, during normal business hours and upon two (2) days prior notice by SCPPA, for the purpose of undertaking reasonable feasibility studies and due diligence review. SCPPA will cause SCPPA Personnel to abide by Developer policies and safety protocols at all times during periods of access to Option Property and shall conduct its activities in such a manner so as to avoid material damage to the Site and avoid materially interfering with the operations of the Facility.

3. Storage Project.

3.1 Storage Project Development; Ownership. Except as specifically set forth below, and in a Lease, SCPPA shall be solely responsible, at its sole cost and expense, for engaging an EPC contractor, securing financing and constructing and installing the Storage Project. Unless otherwise agreed to by the Parties, upon completion, SCPPA shall be the owner of the Storage Project. The foregoing notwithstanding, upon exercise of the Option, Developer shall have the right of first offer to provide financing for the Storage Project, including lease financing, or Storage Project ownership by Developer. SCPPA shall reasonably consider any such offer of financing provided by Developer.

3.2 Storage Project Characteristics. The Storage Project shall have a nameplate capacity no greater than twenty-four percent (24%) of the Contract Capacity. The Storage Project shall connect to the AC or DC portion of the Facility, as mutually agreed to by the Parties.

3.3 Developer Responsibilities. In addition to and without limiting any of Developer’s obligations under the PPA, including Section 12.6, Developer agrees to reasonably cooperate with SCPPA’s efforts to develop and install the Storage Project, including providing qualified personnel to assist with the activities set forth herein and providing information about the Facility. In particular, at SCPPA’s request, Developer shall use commercially reasonable efforts to assist SCPPA with the following installation tasks, provided that Developer shall not be required to incur third party costs or expenses in excess of One Hundred Eighty-Two Thousand Dollars (\$182,000) in the aggregate in connection with the obligations of Developer set forth in Section 12.6 of the PPA and this Section 3.3:

- (i) preparing an RFP for the Storage Project.
- (ii) selecting a technology and vendor to install the Storage Project.
- (iii) Managing the installation of the Storage Project.
- (iv) Any other related activities, including interconnection and permitting efforts.

4. Miscellaneous.

4.1 Representations and Warranties of SCPPA.

(a) SCPPA is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by SCPPA of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of such SCPPA's regulatory or governing bodies, other than that which has been obtained; provided that further authorizations from such Buyer's regulatory or governing bodies will be required for SCPPA to exercise the Option; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of SCPPA enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

4.2 Representations and Warranties of Developer.

(a) Developer is a limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization and is qualified to do business in the State of California, and has the legal power and authority to own or lease its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) Developer has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement, and Developer has delivered to Developer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Developer as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Developer certifying as to the names and signatures of the authorized representatives of Developer.

(c) The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

(d) This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement

of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

4.3 Waiver of Consequential Damages. THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS AGREEMENT.

4.4 Assignment. SCPPA may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, in whole or in part without the consent of Developer to a Qualified Buyer Assignee that is also the assignee of the PPA. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Developer pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of SCPPA under this Agreement, thereby relieving the assignor SCPPA from its duties and obligations hereunder. Except as set forth in this Section 4.4, neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

4.5 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by SCPPA and Developer.

4.6 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. The parties hereto agree that venue for any action brought to enforce the terms of this Agreement shall be in the applicable courts of the County of Riverside and the Parties hereby submit to the jurisdiction of such courts.

4.7 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

4.8 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements for such instruments or communications set forth in the PPA.

4.9 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Option Period shall automatically end, and this Agreement shall automatically terminate and be of no further force or effect.

4.10 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and

conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

4.11 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

4.12 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

4.13 Recording. No later than Site Control Milestone Date, Developer shall identify the Site and the Parties shall execute and deliver a Memorandum of this Agreement in form and substance acceptable to SCPPA, which Memorandum shall promptly be recorded in the Official Public Records of the County in which the Site is located.

4.14 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party.

4.15 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Developer and that SCPPA may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

4.16 Successors and Assigns. All covenants, promises and agreements by or on behalf of the Parties contained in this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

*[Signature page follows.]*

IN WITNESS WHEREOF, the Parties have executed and delivered this Storage Option Agreement as of the Effective Date.

ANTELOPE DSR 1, LLC

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

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

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

**SCHEDULE 12.2(h)  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF JULY 16, 2015  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
ANTELOPE DSR 1, LLC**

**STRUCTURE OF PARENT ENTITIES**

